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NATIONALITY

INCLUDING

NATURALIZATION

AND

ENGLISH LAW ON THE HIGH SEAS AND BEYOND THE REALM

PART I.

NATIONALITY AND NATURALIZATION.

F. T. PIGGOTT.

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NATIONALITY.

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INCLUDING

NATURALIZATION AND ENGLISH LAW ON THE HIGH SEAS AND BEYOND THE REALM.

IN TWO PARTS.

PART I.

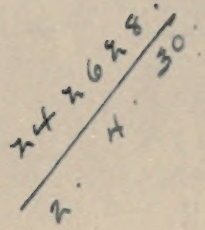
Nationality and Naturalization.

BY

SIR FRANCIS PIGGOTT, KT., M.A., LL.M.,

CHIEF JUSTICE OF HONG KONG.

Taylor



LONDON:

WILLIAM CLOWES AND SONS, LIMITED,

7, FLEET STREET.

1907.

UNIVERSITY OF CALIFORNIA

PREFACE.

In the First Part of this book I have endeavoured to unravel the law of British Nationality, with its allied subject, Naturalization.

This law lies almost entirely within the compass of the Naturalization Act of 1870. It has been considered in very few cases. But the fact that questions under this Act come so seldom before the Courts must not be taken to indicate that the existence of doubts as to a person's nationality is of rare occurrence. The nature of the subject is such that difficulties do not often arise before Courts of Law. There must be a multitude of persons who cannot say with certainty whether they are British subjects or not; but their most common trouble arises in the Consulates, and their plaints find their way into the columns of the newspapers.

Into the merits of the vexed question whether the *jus soli* should not now be abandoned and British nationality be based henceforward on the *jus sanguinis* I have not entered at length; but it was impossible not to point out the inconveniences which may result from the continuance of the present law, more especially in connexion with "double nationality."

It is but a crude way of putting so important a question before the nation to state it thus: Shall the principle on which British nationality is based be altered?

The question should rather be put in this way: Birth within the realm has hitherto made men British subjects; in view of the many inconveniences resulting from this law, shall it be discontinued, and the broad rule be established that the children of British subjects shall be British subjects? The change would be radical, but it is difficult to see whose rightful interests would be prejudicially affected. It would include as British subjects those who are so in spirit already, the children's children of the third and subsequent generations, who now run the risk of having no nationality; it would exclude those who are in spirit and in common parlance

foreigners, the accident of whose birth in the Empire endows them with rights for which they give no allegiance in exchange. I doubt whether the extent of those rights, more especially in the matter of ownership of British ships, is fully realized. But though the change would be radical, the spirit of the present law would be maintained, for citizenship by right of blood would still be based upon the right of birth; the nationality of every natural-born British subject would be derivative from the birth of some ancestor on British soil.

It may be that with this the national sentiment would be satisfied. And, after all, the change would not amount to more than this—that in the fulness of time Great Britain would do what all other States must have done at some stage of their existence. For *jus sanguinis* cannot of itself stand upright as a basis of nationality. It presupposes a first ancestor, the father of the family which has subsequently developed into a nation. At some period or other a State must have depended on birth within its borders for its citizens, until, at the time of the writing of its laws, it stamped its nationality upon them and their descendants for ever.

The change would involve a scheme for dealing with existing cases of double nationality; difficulties would arise in connexion with details, but they could not be insurmountable.

As for the Naturalization Act, few people have ever had a good word to say for it. The mere fact that it starts with a subject entirely remote from naturalization is in itself confusing, and the sequence of the subsequent sections does not at first sight appear to be based on any very intelligible scheme. It is essentially, as its predecessors of 1844 and 1847 were, an "Aliens Act," dealing with two main questions—How an alien can become a British subject: and, How a British subject can become an alien. Curiously enough, it takes the second point first in order. An attentive study of this statute, however, reveals a thread of logical thought which holds the sections together in consecutive sequence. But there are many omissions, and the meaning of its most important provision is shrouded in doubt.

In connexion with the Colonies the subject of naturalization gives rise to many curious and difficult problems, the

solution of which I have endeavoured to find. Not the least important of them appears to me to spring from the somewhat vague language of the Act of 1847—the second Aliens Act; some of them, however, are of much more recent date. Here, again, it was impossible not to point out the inconveniences which may result from the continuance of the existing system. In order that the difficulties of the subject should be fully understood, I have devoted one chapter to a critical analysis of the Canadian Naturalization Act of 1881, in the interpretation of which nearly all of them arise. It seemed necessary to analyze in a similar manner the provisions of the Naturalization Convention with the United States, which also gives rise to some interesting questions.

In the Introduction to the First Part, I have considered the position of British nationality in law. As a ground for diplomatic action or assistance it is, of course, the important element; it may be of great importance when questions arise under foreign systems of law; but so far as British law is concerned, apart from the fact that it brings people within the jurisdiction of the Consuls in certain Eastern countries, the consequences of nationality are practically limited in their effect to the operation of certain special statutes, and of the extra-territorial law which applies on the high seas or generally beyond the realm. In devoting the Second Part of a work on Nationality to an examination of the abstruse questions connected with extra-territorial law, I may at first sight appear to have blended two distinct subjects into one work. But, apart from the fact that they have several points of contact, it seemed to me that a volume treating of the consequences of nationality was in legitimate sequence to one treating of nationality itself.

I believe the collection of extra-territorial laws to be complete; I feel certain that none have been omitted which involve any principle which has not been discussed.

This subject does not lend itself to concise treatment, for we have not even a starting-point on which all are agreed. I have therefore adopted the method of working out the argument at all points before the reader's eyes. Many of the questions involved lie on the fringe of the law, and it is only with great diffidence that solutions have been suggested.

The chapters which deal with the "Realm and its Waters" [Part I, Chapter II], and with the broad principles of Extra-territorial Law [Part II, Chapter I], introduce many matters which formed the subject of study in the preparation of the British argument in the Behring Sea Arbitration. The recollection of those days of arduous work has induced me to dedicate these pages to the memory of the great lawyer who moulded that argument into its final shape, then Attorney-General, afterwards Lord Chief Justice of England.

The last chapter of the book deals with sea-fishery legislation, an intricate subject, which, from its essentially practical nature, puts all theories to the test; for it is certain that unless that legislation can be supported, both in the letter and the spirit of the statutes, all that has been said and written on the question of jurisdiction is worthless. It is curious that, without deliberate intention, I have found in bringing the argument of the book to its close, a judgment of Lord Russell of Killowen which furnishes what I believe to be the key to the solution of the difficult problem which underlies the question of extra-territorial legislation.

I must crave the reader's indulgence in respect of two matters. The volumes were printed while I was in Mauritius; and, in spite of the utmost care in correcting the proofs, there are many blunders, which I have endeavoured to detect and correct in a Table of Corrigenda in each volume.

Some months have elapsed between printing and publishing. Re-reading the printed pages, I became painfully conscious that some points had not been made sufficiently clear, and that others might be amplified with advantage. I have endeavoured to supplement these two deficiencies by adding to each Part a series of Additional Notes, which, though they must somewhat try the reader's patience, will, I believe, be found useful in elucidating a very complex subject.

I have to thank my friend Mr. Justice Wood Renton, of the Ceylon Bench, for many valuable suggestions, and for much patient assistance in revision of manuscript and proofs.

F. T. P.

January 24, 1907.

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Additional Notes to Part I.

Page 8, 6th line from the bottom.

The meaning of the word "*aujourd'hui*" in M. Weiss' proposition "*aujourd'hui la nationalité ne s'impose pas*," is somewhat difficult to arrive at. The idea seems to be merely this, that (putting on one side the question of minors) *now* a Frenchman may be naturalized in another country, and thereby lose his French nationality. But this was expressly provided by Art. 17 of the Civil Code: "*Perdent la qualité de Français :— Le Français naturalisé à l'étranger . . .*". *see* p. 124.

Page 14, line 6.

The sentence "nor are they 'territorial waters'" refers to those waters in the ordinary acceptation of the term. The dominion waters have in fact been included in the definition of "territorial waters" in the Territorial Waters Act, 1878. *see* Part II., Chapter V., p. 195.

Page 20, last paragraph.

The Gulf of Carpentaria, on the northern coast of Australia, is about 400 miles wide from Cape Arnhem to Cape York. By the Letters Patent, June 6th, 1859, the boundary between Queensland and New South Wales was thus defined:—

> "... following the 25th parallel of south latitude westerly to the 141st meridian of east longitude, which is the eastern boundary of South Australia, together with all and every the adjacent islands, their members and appurtenances in the Pacific Ocean."

By the Letters Patent, March 13th, 1862, so much of New South Wales was annexed to Queensland as lies to the north of the 26th parallel of south latitude and between the 141st and 138th meridians of east longitude, "together with all and every the adjacent islands, their members and appurtenances in the Gulf of Carpentaria."

Page 21, last paragraph.

An example of express claim of outlying islands and reefs is to be found in the Order in Council, May 19th, 1898, which altered the northern boundaries of Queensland; by this it was declared that the islands and reefs lying to the northward of the boundary as altered by the Order should thenceforward become part of British New Guinea.

Page 23, 9th line from the bottom.

The statement that there would be a belt of territorial waters round a rock at sea on which a lighthouse has been erected is perhaps stated too positively. If, however, outlying rocks can be thus occupied, it would seem that they should be treated as independent parts of the dominion.

Page 28, last paragraph.

In his judgment in *R.* v. *49 Casks of Brandy* (3 Hagg. Adm. at p. 275) Sir John Nicholl said, "I think that Spithead and the Solent Sea generally are within the county of Hants, and have been held to form part of the land jurisdiction."

Page 32, 2nd paragraph.

The short title of the Act of 1878—the Territorial Waters Jurisdiction Act, 1878—should have been here given in full. The more condensed title has, however, been used throughout the work for the sake of brevity.

Page 82, line 27.

The sentence "either before or after this union" should read "either before this union or after it has ceased."

Page 83, 2nd paragraph.

The sentences "So, they can hold lands," and "It is not 'all subjects may hold lands,'" should read respectively—

So, they could hold lands, and
It was not "all subjects may hold lands."

Page 85.

In connection with the settlement of land tenure by treaties of cession, the following note should be added:—

In the case of the cession of Heligoland to Germany, the following provision was contained in Art. 12 of the Agreement (Schedule to 53 & 54 Vict. c. 32, Anglo-German Agreement Act, 1890):

2. "The German Government will allow to all persons, natives of the territory thus ceded, the right of opting for British nationality by means of a declaration to be made by themselves, and in the case of children under age by their parents and guardians, which must be sent in before January 1st, 1892."

Page 91, last paragraph, 5th line from the bottom.

The statement that the restrictions of the Act of Settlement with regard to naturalized persons had been virtually repealed by the Act of 1870, is not strictly accurate. The provisions of the recited Acts, among which was the Act of Settlement, were repealed by s. 1 of the Act of 1844, in so far as they were inconsistent with the provisions of that Act.

Page 98, the end of Chapter VI.

The following note should be added with regard to the effect of the royal assent referred to in the concluding paragraph of the chapter:—

Under ordinary circumstances the royal assent does not render valid colonial legislation which is *ultra vires*. The suggestion in the text is only put forward as a possible argument.

Pages 106 and 126.

The nationality under the statutes of the children of persons naturalized referred to on p. 106 is discussed on p. 126. The same argument applies to children born abroad of persons naturalized under the Act of 1844, but who did not apply for a certificate under the Act of 1870; that is to say, did the person naturalized under the old Act become a "natural-born British subject?"

Page 111.

The following should be added in the 3rd paragraph after the words "which is given to the word," the words "just as" being deleted:—

It is assumed in s. 3, where "foreigners who have been naturalized as British subjects" are expressly referred to. So

Page 115, 2nd paragraph.

The words "sued as a subject may be sued," should read—

Served with a writ as a subject may be served.

Page 120, 3rd and 4th lines.

The sentence should read—

But whatever may be the proper construction of this paragraph.

Page 139, 14th line from bottom.

After the words "of a married woman," there should be inserted—

independently of her husband.

Page 143, last paragraph.

The second sentence should read—

The Act of 1844 did not recognize naturalization into a foreign State,

Page 148, last line but three.

"The statutes of Anne and George II."

Although the second paragraph of s. 4 of the Act of 1870 includes, as is shown in the text, many other cases, it is more than doubtful whether the intention of the provision extends to cases falling under the statute of George III.

Page 152, 2nd and 3rd paragraphs.

The explanation of s. 3 in these two paragraphs is far from clear, owing to the use of naturalization in connection both with Great Britain and the other contracting State.

Under ordinary circumstances, a person who has become naturalized in Great Britain cannot divest himself of his British nationality, except by availing himself of s. 7, and going through the formalities of naturalization in another State. In the case of his former State, however, where there is a convention, s. 3 allows him to resort to his former nationality by means of a declaration of alienage. The curious point about this provision is that no corresponding right is given to British subjects. *sæ* p. 270.

Page 157, note to s. 1 of the Merchant Shipping Act.

The word "otherwise" in paragraph (*i*) might seem to show that the only case contemplated of taking the oath of allegiance to a foreign Sovereign was where it was connected with becoming a subject of that Sovereign; the subsequent language shows, however, that the taking of the oath without becoming subject is treated as a special disqualification.

Page 159, end of Chapter X.

If the suggested principle is sound, it should apply to a person who has taken the oath of allegiance to a foreign Sovereign before he offers to take the oath as Member of Parliament, as well as to one who so acts subsequently to having taken his seat.

Page 161.

The following should be added to the 3rd paragraph :—

And in s. 15 the full form is used, "where any British subject has in pursuance of the Act become an alien," where "statutory alien" would have served, if that term had been intended as a general definition.

Pages 165 and 176.

The following note should be added :—

The description used by Sir A. Cockburn, C.J., in *R.* v. *Keyn* [L. R. 2 Ex. D., at p. 236], of a person owing "allegiance to the law," accurately describes the position of a foreigner within the realm.

Page 165, 5th and 6th paragraphs.

The "subsequent chapters" referred to are in Part II.

Page 176, 3rd paragraph.

I have assumed the decision in *Fairman* v. *Ives* to be sound; but it is immaterial to the argument whether this privilege is absolute or qualified.

Page 180, 4th paragraph.

The words "as usual" should be omitted from the sentence referring to the right of the self-governing colonies to adhere to commercial treaties.

Page 206, 1st line of the last paragraph.

Add this reference: "*cf.* p. 47."

Page 215, line 18.

"Claimed by the Power," *that is*, so long as the claim is a reasonable one as judged by principles already established.

Page 217.

ADDITIONAL NOTE ON THE CONSTRUCTION OF FRENCH CODES IN BRITISH COLONIES.

The practical necessity for such a rule of adaptation is frequently demonstrated in Mauritius, and probably also in other Colonies similarly situated with regard to the Codes.

There was in the Colony, so long as the French procedure was in force, a *Tribunal de Première Instance.* In 1852 this tribunal was abolished, but there was no definite transfer of its jurisdiction to the English Courts which were then created. A Court with the power and jurisdiction of the Queen's Bench with "full original jurisdiction" was created. It may well be argued that this expression is wide enough to invest this English Court with the jurisdiction which was given by the Codes to the old French *Tribunal de Première Instance;* but even this argument does not conclude all the difficulties, for the jurisdiction was sometimes vested in the Court and sometimes in the President. The concrete case arose under the following circumstances. The security to be given by the Conservator of Mortgages is by the local law (1 Brumaire, An XIV, Art. 49) to be accepted by the *Tribunal de Première Instance.*

Researches in the archives showed that while the French system was

in force, the security had been received *au Gref du Tribunal* by the President: but that when the English system was introduced the jurisdiction was exercised by a Judge in Chambers. The point arose recently for decision, and the Court held that there was no warrant for this practice, but that the jurisdiction must be exercised by the Court itself. The question was of great importance, as it affected the securities of many other public officers, notaries, auctioneers, ushers, and others, which according to the Code are to be received in accordance with the same procedure.

Note.—The text of the decision had not reached England at the time of publication. It will be found in due course in the reports of the Supreme Court of Mauritius.

Page 220, line 7.

The sentence beginning "and neither the common law" should read—

the common law cannot apply to make persons born there British subjects, and such countries, for the purposes of the statutes, must be deemed to be abroad.

Page 222, 1st paragraph.

This question has been considered by the Supreme Court of Mauritius, but the text of the decision had not reached this country at the time of publication. It will be found in due course in the Mauritius Law Reports.

Page 224, last line but one.

The words "the Colonial Treasury" should read—

the Treasury of that Colony.

Page 228, 2nd paragraph.

Insert the following marginal note:—

The doubt is explained on p. 239.

Page 236, last two lines.

Insert the following reference: "*cf.* p. 156."

Page 238, last paragraph.

The assumption is made on the basis that *Routledge* v. *Low* still governs the question decided by it. The case is retained for the sake of convenience, and as more clearly illustrative of the principle than any other.

NOTE ON THE CONTINGENCIES OF SERVICE UNDER THE CROWN.

Service under the Crown appears in s. 7 (1st para.) of the Act of 1870 in a dual capacity: with regard to the past, five years' service is sufficient to support the application for naturalization: and with regard to the future, an intention to serve may supply the place of the ordinary condition of residence. There is, however, this fundamental difference between the two conditions: whereas the residence, both in the past and the future, must be in the United Kingdom, the service under the Crown is not so limited. It is not even limited to the dominions. It may therefore be either in the dominions or abroad.

I do not think that there is anything written which deals authoritatively with this question, and I doubt if it will bear very close analysis when we come to apply the rest of the Act to it.

So far as service in the United Kingdom is concerned, there is no difficulty; the case, however, by the condition of five years' prior service, would seem only to contemplate service in an office to which the taking of the oath of allegiance is not attached (*see* p. 108). But when we come to intended service beyond the United Kingdom, it is difficult to see how the 4th paragraph of s. 7 can be applied. The rigid limitation to the United Kingdom of all the rights to be enjoyed in virtue of the certificate, which the narrow construction of this paragraph necessitates, can hardly be applicable to a naturalization expressly granted for enjoyment beyond the United Kingdom: and even the broader interpretation does not seem to meet all the exigencies of the case.

With regard to the question of cessation of service after naturalization, the same difficulties arise as in the case of cessation of residence. In the absence of fraud—assuming such a thing possible (*see* p. 102)—it is difficult to see what remedy there would be; and it seems fairly certain that the Secretary of State has no power to limit the duration of the certificate, even by means of regulations.

The position of persons in the service of the Crown in the Colonies presents questions of much delicacy. It is unusual—indeed I do not think that there is a single instance—for service under the Crown to be introduced in colonial Ordinances as a ground to support naturalization; service in the Colonies would, therefore, in practically all cases be coupled with colonial naturalization. But this has no effect beyond the Colony granting the certificate. The difficulties of the problem which have been considered in the case of an ordinary person, even during his residence in the Colony, must inevitably be intensified in the case of a servant of the Crown; but many anomalies must inevitably arise when he is absent from the Colony on leave, for though he is still a servant of the Crown, yet he is an alien, even in the United Kingdom. In his former country, if he has not ceased by its laws, or by treaty, to be a subject, the effect of the condition of the 4th paragraph of s. 7 may be that the Crown not only waives its right to his service, but also declines to protect its servant. On his return to the Colony from leave, the curious question would arise whether, having become an alien, he would not have to be again naturalized.

In the case contemplated, however, if the service in the Colony had been of five years' duration, the position would be improved, for the person would be entitled to apply to be naturalized in the United Kingdom on payment of the prescribed fee.

Corrigenda to Part I.

Page 5, line 5 from the bottom, *for* 'a' *read* 'à.'
„ 14, line 30, *delete* the comma *after* 'Channel.'
„ 16, line 24, *for* 'country' *read* 'county.'
„ 17, line 10, *for* 'exclud' *read* 'exclude.'
„ 19, line 1, *for* 'it' *read* 'if.'
Pages 21, 22, 25, *the word* 'Mississippi' *has unfortunately remained uncorrected on these pages with a single* 'p.'
Page 27, line 7, *for* 'that' *read* 'as.'
„ 34, line 5 from the bottom, *for* 'it,' *where it last occurs, read* 'if.'
„ 41, line 4, *the word* 'born' *should be inserted after the words* 'and every person.'
„ 44, line 24, *for* 'because' *read* 'becomes.'
„ 45, line 20, *for* 'then' *read* 'than.'
„ 49, line 25, *after the word* 'children' *the words* 'born abroad' *should be inserted.*
„ 52, line 2 from the bottom, *delete* 'a' *before* 'British.'
„ 63, line 10, *the word* 'or' *should be deleted;* and line 19, 'or' *should be inserted before the words* 'by marrying.'
„ 67, section (E), *the regnal year of the statute should be* '32 & 33 Vict.'
„ 68, line 4, *after the words* 'There is' *insert* 'a.'
„ 85, line 19, *the words* 'clear evidence of is' *should be* 'clear evidence of it is.'
„ 101, last paragraph, *the name* 'Bourgoise' *has been mis-spelt* 'Bourgeoise' *here and elsewhere.*
„ 111, second marginal note, *the word* 'State' *should read* 'state.'
„ 116, last marginal note, *for* 'alegiance' *read* 'allegiance.'
„ 125, last marginal note, *for* 'nationality' *read* 'naturalization.'
„ 128, line 15, *after* 'naturalized' *insert* 'person'; marginal note, *for* 'charge' *read* 'change.'
„ 131, line 2 of the quotation, *for* 'no only' *read* 'not only.'
„ 132, line 25, *there should be a* '—' *after the word* 'occurrence.'
„ 133, line 9 from the bottom, *for* 'presuably' *read* 'presumably.'
„ 131, line 1, *delete* 'at.'
„ 137, line 2, *for* 'These' *read* 'The other'; second marginal note, *the note should be* 'expatriation of children of expatriated parents.'
„ 138, second marginal note, *the note should be* 'disability a bar to expatriation.'
„ 139, line 4 from the bottom, *before* 'naturalization' *insert* 'the.'
„ 143, last marginal note, *delete the comma after* 'Retroactive'
„ 144, line 21, *for* 'subject' *read* 'subjects.'
„ 146, line 7, *after* 'arrived at' *insert* 'by.'
„ 147, line 1, in the marginal note to the section of the statute 'British subject' *should be* 'British-born subject.'

Page 151, in the marginal note to the section of the statute, *for* 'statue' *read* 'status.'
„ 153, last marginal note, *for* 'Expatriation' *read* 'Extradition.'
„ 155, footnote, *for* 'p. 157' *read* 'p. 159.'
„ 156, last marginal note, *the last syllable of* 'expatriation' *has been omitted.*
„ 158, line 10 from the bottom, *after* 'relates' *the word* 'to' *should be added.*
„ 161, line 6, *before* 'United Kingdom' *insert* 'the'; second paragraph, *the reference should be to* 'p. 62.'
„ 166, line 7 from the bottom, *for* 'Fabre' *read* 'Favre'; line 9 in s. 2 of the Naturalization Act, *for* 'quality' *read* 'qualify.'
„ 167, footnote, *the reference should be* '*see* Part II., p. 219.'
„ 170, line 13, *for* 'raise' *read* 'raised'; line 25, *delete the last* 'in.'
„ 193, third marginal note, *for* 'rection' *read* 'section'; fourth marginal note, *for* 'national' *read* 'nationality.'
„ 200, fourth marginal note, *for* 'legitimacy' *read* 'nationality'; line 9 from the bottom, *for* 'with' *read* 'which.'
„ 201, line 8 from the bottom, *after* 'claimant' *insert* 'to.'
„ 202, line 22, *delete* 'and.'
„ 214, line 10 from the bottom, *for* 'broades' *read* 'broadest.'
„ 220, line 1, *before* the words 'use of' *insert* 'the.'
„ 223, line 29, *for* 'example' *read* 'examples.'
„ 230, line 19, *for* 'now' *read* 'at this point.'
„ 237, line 27, *for* 'subjects' *read* 'subject.'
„ 238, line 29, *for* 'to' *read* 'two'; footnote, *the reference should be to* 'Part II., Chapter VII., p. 252.'
„ 244, line 5, *before* 'instead' *insert* 'yet.'
„ 247, line 3 from the bottom, *for* 'pre-supposes' *read* 'pre-supposed.'
„ 249, line 27, *after* 'may apply' *insert* 'to.'
„ 252, line 23, *after* 'in' *insert* 'the.'
„ 255, line 9 from the bottom, *the* hyphen *should come after the word* 'title.'
„ 256, line 14, *before* 'necessarily' *insert* 'is.'
„ 257, lines 2 and 3, *for* 'personality' *read* 'personalty.'
„ 269, first marginal note, *for* 's. 6' *read* 's. 7.'

Introduction.

The Position of Nationality in Law.

Nationality imports allegiance. Men still swear that they will be faithful and bear true allegiance to their Sovereign Lord the King: and the alien may throw off his alienage, and, repeating the venerable formula, assume the allegiance of the subject. Yet beyond the right to call himself Englishman, he knows little, save in a general way, of what other rights he has become possessed, nor what the duties are which he has undertaken.

We boast that we are citizens of no mean country; yet to define nationality is no easy task: the effect of naturalization is an unsettled question: and the consequences of allegiance are difficult to state. The Statute Book itself is the Statute of Allegiance, and statutory obedience has taken the place of that unwritten bond which tied the subject to his Sovereign. Yet the name remains, and there is still attached to it the personal feeling of respect and loyal devotion to the Sovereign which is the modern substitute for knightly service: a feeling which the naturalized alien is expected to share, for a certificate of his loyalty is required before he can be admitted subject.

The object of this book is to establish what British nationality is: to show how it exists, how it may be assumed, and how shaken off: and to determine the principles on which its consequences rest in this country, on the high seas, and abroad.

It is extraordinary that so important a subject as nationality should still be in a state of confusion, that it should be still possible for a man not to know to what nation he belongs, that it should be still possible for a man to be claimed as subject by two, and perhaps two hostile, States. "Double-nationality" is still a possible state of existence, with its inevitable consequence, a twofold allegiance. And so also is "No-nationality", the state in which a man is cast adrift upon the world, and from which many curious consequences may flow: ranging from the commission of murder with impunity in countries without regular forms of government, to the acquisition of uninhabited islands in his own right of sovereignty. The astonishment is not caused by the fact that there should be points of difference in the details of the laws of nationality adopted by different nations, but by the fact that the progress of the world having developed social and commercial re-

Introduction. lations between nations, and having clearly shown how points of difference have become points of conflict, there should have been so little attempt to arrive at order out of chaos, to reduce the resulting inconveniences to a minimum. Our own not very satisfactory contribution to the settlement of the question dates only from 1870.

But there is a practical side to the question. Save in time of war, when rival States may claim the services of the same individual, and he be liable to be shot for taking arms against his Sovereign, whichever standard he elect to follow in the conflict — save in time of war, the question of nationality *per se* is not in law of supreme importance. Although some rights and duties are still dependent on it, more especially when the subject is beyond the realm, many are entirely independent of it. Progress has beaten down the walls of partition which in old times kept States and their subjects apart from one another. Commerce has broadened the paths along which men may walk with impunity regardless of their nationality. The fusion of men's interests has led, and still leads, to the confusion of their nationality, and the obliteration of its consequences : and the law, following, as it is bound to follow, the march of events and the effect of time, has slowly worked out new doctrines to meet the new necessities. In due course and after many delays, it may be found possible to put these new doctrines into coherent shape : to make their adoption by different States more uniform in detail, and above all to perfect the procedure by which they may be enforced and acted on.

The primitive idea which nationality involved, obedience to the Sovereign, was suited to the times when men lived more at home, when intercourse and commerce with the outer world were difficult and tedious. Quite in keeping with that idea were the writs forbidding departure from, and of recall to, the realm ; but the first has become a statutory writ, and the last has passed out of mind. All other obedience due to the King has changed to obedience to Acts of Parliament. That aliens coming within the realm should also come within the compulsion of this obedience, needs no explanation or justification : but it is due to the fundamental principle which governs the operation of Acts of Parliament, and not to allegiance ; although the books have invented to misnomer " temporary allegiance " to describe the legal position of the resident alien.

That subjects passing beyond the realm, still fall under

the general operation of its laws in virtue of their allegiance, is a dead fallacy, though it is not yet buried. They are subject to some of its laws when Parliament expressly so provides, and this is based on their allegiance. But the strictness of the rules by which the exercise of this legislative power is governed, shows how completely Parliament has replaced the Sovereign in his relations with his subjects.

But the law which is made in the Courts, has for a long time been slowly elaborating practical rules for the solution of difficulties to which the strict rule of nationality gave rise. The most important derogation from the sway of sovereignty is to be found in the law of domicil. In many important respects a man's domicil has, in the determination of his rights and liabilities, superseded his nationality. It may be described as an effort of the law to create a new standard, by which certain important questions may be settled, in which others, besides the man himself, have a right to be considered. Domicil of origin in many cases coincides with nationality; but in other cases there is substituted for the law of the community to which by nationality he belongs, the law of that community among which the individual has elected of his own free choice to dwell permanently.

And after domicil comes that principle of much more recent growth, the law of "usual residence". Here nationality is completely discarded, and in certain questions the governing law is taken to be that of the community among which the individual usually dwells. The principle is only in process of adoption, and the area within which it ought properly to be applied has not yet been fully established.

Nationality reappears in the law of the high sea: a question full of difficulty, in which allegiance, protection of the flag, the jurisdiction of the Admiral, and "floating territory", are interwoven to such a degree, that the wonder is that the simple solution of direct legislation has not long ago been resorted to.

Nationality re-asserts itself in the law of Foreign Jurisdiction, and is the basis of that law in both its forms: whether it be established in countries without regular forms of government, or in those oriental States where the privilege of exterritoriality has been expressly granted. But this consular jurisdiction is not dependent on anything inherent in Sovereignty or in allegiance; for whether there be grant or no grant, it cannot be exercised without the express sanction of Parliament.

Chapter I.

Of Nations generally.

Chapter I

Nationality unfortunately lies outside the domain of practical International Law. There are no elements common to the systems of all or many nations which could be taken as a foundation of principles on which a more or less methodical system of rules might be built up. It is a question appertaining in every sense of the words to the "Conflict of Laws". That conflict which exists in every branch of law, springing from the essential differences of the systems which different societies have adopted, and coming into bold relief whan an individual comes within the domain, actual or assumed, or two or more systems, is more marked in the case of nationality than in any other subject. On many questions there is a commencement of agreement, not in the systems themselves, but as to the degree of waiver on the one hand, and of recognition on the other, which it is expedient to adopt under certain circumstances : but as to the fundamental rule of law on which the nationality of a man depends, and as to its recognition, there is no approach to agreement, hardly any attempt to narrow the area of the conflict. The only change effected in modern times is to give in each country more precision to the national rule : the practical result being to accentuate the struggle between conflicting nationalities when it arises. A comparative study would, therefore, result in little practical good : and we must confine ourselves to the law of England.

Divergence of fundamental principles of nationality in different systems.

A Nation—its meaning.

Before, however, dealing with nationality, there is evidently a question precedent to be answered—What is a Nation ?

Into vague metaphysics it is unnecessary to enter ; a passing reference to the French and Italian schools of thought is however expedient, in order to give some idea of the views of other countries, and to emphasise what has already been said as to the existence of the conflict between different systems of laws.

Italian and French metaphysics.

With deference to the learned writers, the teaching of the continental schools is characterised by a lack of practicability, which renders it of little use in the settlement of actual difficulties.

Of what help to the person—lawyer, or statesman, or diplomatist—who has to bring conflicts of nationality to a prac-

tical issue, can such a definition be as the following, ascribed to Mancini, and described by M. André Weiss, a French author, as the "juridicial formula of eloquent abstractions":

Mancini's juridical formula.

"La *nation* ne doit pas être confondue avec l'*Etat* : celle-là est l'idée première dont celui-ci procède : les éléments qui concourent à la première sont la race, la religion, le langage, les mœurs, l'histoire, la législation : mais ces divers éléments ne constituent la nation que lorsqu'ils ont été pour ainsi dire cimentés par l'unité morale, par la volonté commune de ceux qu'il s'agit de grouper sous un même sceptre ou d'incorporer dans un même état. Dès que cette volonté générale s'est greffée sur la communauté d'origine et d'intérêts, la nation existe, et c'est pour elle un droit imprescriptible et sacré que de s'organiser en état. Ce droit est pour elle ce qu'est pour l'homme le droit de la liberté individuelle, et le *principe des nationalités*, espoir suprême des Etats démembrés ou conquis, a pour objet de le proclamer et d'assurer son triomphe."

M. Weiss criticism.

M. Weiss endeavours, but with little success, to be more precise and juridically accurate, and he criticises Mancini's juridical formula very freely, for he sees acutely its weak spots.

"La vérité" he says, "est que le criterium de la nationalité, telle que l'entend l'école italienne, n'existe pas, ou du moins n'existe pas là où l'on prétend le découvrir. Peu nous importe d'ailleurs ! quelle que soit son origine, quelles que soient les acceptations diverses, le mot *nation* a, dans le langage juridique, un sens aujourd'hui parfaitement défini, consacré par une pratique par une tradition constantes. La nation est un être moral, susceptible d'avoir, dans ses rapports avec les êtres similaires qui l'entourent, des droits et des obligations, dont le droit *international* a précisément pour objet de fixer la nature et l'étendue." "Or", he continues "la personalité peut-elle appartenir à une chimère, à une aspiration, à une conception métaphysique, dépourvue d'existence et de réalité."

In justice to these lego-metaphysicians, it must be recorded that their disquisitions as to the reasons which have divided the world into States, and man into subjects of different Sovereigns, lead them to the very sound conclusion at which Vattel and the fathers of international lawyers had long ago arrived, that "*La nationalité est le lien qui rattache a l'Etat chacun de ses membres*": a principle embedded in English jurisprudence—"Nationality is the status of an individual as subject or citizen in relation to a particular Sovereign or State."

Vattel's definition of nationality English definition

It is astonishing that after having, not without much periphrasis, arrived at so sound a definition, this school should

Chapter I

immediately have lost itself again in discussions in which an imaginary contract takes a prominent part.

It must be agreed that it is useful to have a scientific basis on which to build—such a proposition as is common to all schools, that nationality, as a law-term, means the status of an individual as subject or citizen in relation to a particular Sovereign or State : but it must be also clearly apparent that this proposition is not one which can find much concrete application. It would be difficult to imagine a case which could be decided by mere reference to it. The value of any such proposition depends on the subsequent use to which it can be put: on the possibility of deriving other propositions of a practical nature from it.

The definition should be capable of giving rise to practical propositions.

If we substitute, as in English law we must, Parliament for Sovereign in this proposition, we derive, as a consequence of its existence, the necessity for obedience to the commands which the subject receives from Parliament. And from this follow the further rules which are subsequently developed—as to the form of the command, the area within which it is enforceable, the methods of its enforcement—and so to the elaboration of the subject which we have in hand.

M. Weiss' contractual theory examined.

But M. Weiss introduces an intermediate step in his argument, as to the necessity of which I have some doubt, but as to the inaccuracy of the conclusion to which it leads him I have none whatever.

He heads his second chapter thus—" *Caractère juridique de la nationalité*" ; and he starts with this somewhat bold assertion :—

" C'est dans un *contract synallagmatique*, intervenu entre l'Etat et chacun des individus qui le composent, que se trouve, selon nous, le fondement juridique de la nationalité."

A synallagmatic contract : " *c'est-a-dire qu'il engendre des obligations réciproques entre les deux parties.*"

M. Weiss proceeds with insistence :—

" Le lien de nationalité ou de sujetion est *contractuel* : c'est-à-dire qu'il naît et ne peut naître que d'un accord de volontés : celle de l'Etat d'une part, celle du national de l'autre."

Nationality has many resemblances to a contract ;

That there are *now* many ingredients in the status involved in any given nationality which resemble the ingredients of the contractual relationship may be admitted : but the ingredients in

question are of a late creation, and have been forced upon the States by practical experience and commercial necessity, sometimes modified by political exigency. *Now* a subject may cast off his nationality — terminate his contract, as M. Weiss would say: but not from any inherent right flowing from the contract, but because the power to do so has been conferred on him by law. He may, having cast off one nationality, assume another. In this again he exercises a power somewhat resembling the contracting power of free agents: but this again is a creation of late legislation, and certainly did not exist independently of it. And it is, moreover, a little difficult to see what has become of the rights of the other contracting party. Nothing seems to be clearer than that nationality, shorn of legislative modifications, is a status imposed independently of the will of the person: and that no one can of inherent right cast off this status and assume another. *Nemo potest exuere patriam* was the law of England prior to 1870; and, unless the right of expatriation is given by legislation, it is probably the fundamental maxim of all nations.

but they are in English law statutory rights, and are the reverse of contractual.

The fact is that M. Weiss has, in his appreciation of some slight resemblances between the relationship involved in nationality and that resulting from contract, lost sight of the fundamental differences. He sees the contractual relation ship on the one side in the duty of the State to ensure to its subjects the enjoyment of certain liberties—such as, of conscience, of property, of trading, of suit before Courts of Law — wherever those subjects go, by means of treaties: and to claim for them indemnity for loss by war or insurrection—this is the "consideration" as it were: and on the other side he finds that relationship in the power of the State over its subjects:—

The assumed contract does not bear analysis.

"En échange de cette tutelle, l'Etat a le droit d'exiger de ses nationaux, même expatriés, l'observation rigoureuse des lois, de toutes les lois qu'il s'est données, de gouverner par ces lois en tous lieux leur capacité, leurs relations de famille, de les punir à raison des infractions qu'ils ont commises anx lois: il peut les contraindre à participer aux charges publiques et à la défense de son territoire".

On this very thin, and in some parts inaccurate, reasoning the mysterious contract is built up. But the learned author sees the pitfall in his path, the purely imaginary nature of the consent of one of the contracting parties. Forseeing that he must admit that the State does in fact impose nationality at birth on its infant subjects, he has recourse to tacit consent.

It is inconsistent with nationality being imposed at birth.

Chapter I

" De la part du national, le consentement peut être exprès ou tacite, soit qu'il ait sollicité ou tout au moins accepté le droit de cité, soit que le tenant du bienfait de la loi ou d'un traité, il n'ait rien fait pour acquérir une nationalité nouvelle ".

Tacit consent does not get over the difficulty

Yet even tacit consent does not clear away all the difficulties which beset him. He is forced to pray in aid of the completion of his theory, the absence of contractual power in a minor.

" Toute personne, avons-nous dit, doit avoir une patrie. Il est donc nécessaire, au moment où l'enfant voit le jour, de lui attribuer une nationalité à laquelle il demeurera attaché, jusqu'à ce que, devenu juridiquement capable d'avoir et d'exprimer une volonté, il puisse désigner la patrie à laquelle il entend définitivement appartenir ".

Fantastic as the theory is, it does not want for elaboration, and other propositions are built upon it. The first proposition is

M. Weiss' subordinate propositions.

" *La nationalité ne s'impose pas* "; and there are two corollaries : " (a).—*Toute personne doit avoir une nationalité* : (b)—" *Nul ne peut avoir deux nationalités.*"

La nationalité ne s'impose pas.

The first somewhat alarming proposition, which is contrary to all recognised notions, is, after the plain meaning is taken away from it, declared only to mean something quite different—

" Quelle est donc la portée vraie de notre règle ? En deux mots, la voici : si l'Etat peut, en principe, attribuer sa nationalité à toute personne qui est placée sous l'action de ses lois, il ne lui est pas permis de la retenir à toujours dans son allégeance, de lui interdire de changer de patrie ".

But even thus whittled away, the proposition will only hold water from one point of view—that of modern legislation. The fundamental theory of nationality is precisely the opposite : and the difficulty which troubles the reader of M. Weiss' introductory chapters, is to realize what is the author's point of view. Is it a study of the inherent qualities of nationality ? as one might be led to suppose from the title : or is it a digest of the principles of French legislation ? I doubt, even if it be only the second, whether it is accurate. Certainly the form of the proposition—"*il ne lui est pas permis* ", seems hardly applicable to the State : but as M. Weiss himself says, "*aujourd'hui la nationalité ne s'impose pas*".

Toute personne doit avoir une nationalité.

And the same confusion is traceable in the corollaries. " *Toute personne doit avoir une nationalité* " — as a general proposition this is true, the verb leaving it sufficiently vague : but as a modern fact it is unfortunately untrue, for the lack of uniformity in the rules which have been adopted by different States does every

now and again leave men stranded without a country, and without a Consulate in which to seek refuge, as M. Weiss himself shows: for in dealing with the minor proposition, he refers to the class of "*heimathlosen*", persons "*sans domicile*" His explanation of their peculiar position demonstrates the unsoundness of his proposition.

Nul ne peut avoir deux nationalités.

And it is the same with his second corollary, "*nul ne peut avoir deux nationalités*". From no point of view is this sound. The mere fact that there exists a want of agreement among different nations on the fundamental question whether nationality should be determined by the birth-place or by parentage, is sufficient to show that double nationality is inevitable. The Royal Commission in 1868 was specially charged with devising means for doing away with it; but, short of our abandonment of the ancient principle of *jus soli*, it is difficult to see what remedy there is.

So much for M. Weiss' theory. A criticism of it was inevitable, as his work is looked upon as a standard authority in France. The defect of the imaginary contractual system is that it does not keep clear the essential qualities which are involved in nationality in general, from those which have been imposed in particular cases by legislation. And in the quotations which are given from J. J. Rousseau and Vattel, there is unfortunately a further confusion between the right to withdraw from the State for the purpose of residence, which must exist unless provision is made to the contrary, and the right to withdraw from the allegiance of the Sovereign, which cannot exist unless provision is made in the law to allow it.

Confusion between right to reside abroad, and right to withdraw from allegiance.

These disquisitions lead to no practical result. So long as we have a sound proposition on which to base nationality, we need go no further in the search for a definition of the term "nation". The English definition of "nationality" is all-sufficient. If we go behind that definition and analyse the expressions used, the question resolves itself into a practical one, the mutual recognition of the limits which nations set for themselves. It is not of much use for one nation to insist that such are its limits, if other nations decline to recognise them, or will challenge them by war. So far as the present subject is concerned, the question is the same; for though we have not to deal with its warlike aspect, the actual limits of the nation enter into the application of the law of any country where *jus soli* is the rule of nationality.

Theoretical disquisitions lead to no practical result.

Limits of a State depend on recognition:

and are to be practically ascertained by an atlas brought up to date.

The answer to the question, what are the limits of any given State, appertains to geography rather than to law: and an atlas brought up to date is our only text-book on the subject. The geological construction of the world, the islands and the continents, mountain ranges and broad rivers, have sketched out its nation-making potentialities; but long-accepted tradition in the middle period, and treaties in the later period, have set their seal upon the delimitation of the States: a seal which no power but conquest or cession can ever rupture. If a question should arise in the Courts which depended on an accurate knowledge of frontier lines, neither Mancini's rhetoric, nor Weiss' juridical system would avail us much: but only, so far as Europe is concerned, the last edition of such a book as Sir Edward Hertslet's "Map of Europe by Treaty". The "Map of Africa by Treaty", where war has not left its mark, is being drawn to-day before our eyes.

Recognition of nations by the Courts depends upon recognition by nations among themselves.

The recognition of nations by the Courts depends entirely on the recognition of nations among themselves: and wherever there is the clear text of a treaty, or the practical limit of a well-marked boundary line acquiesced in by the contiguous States, no difficulties arise. But on the sea-board there is no text of treaty nor well-marked line, to point out the limits between a nation and the sea, the common highway of all people. The water-marks of the tides vary, but may serve as a basis: and a rough and ready rule, that the realm ends at low-water mark, is sufficient for most purposes; but it is unscientific and insufficient, and there are too many practical objections for this to be taken as the absolute rule. The variations of the tides is not perhaps of much moment so far as other nations are concerned, but even these may have an important effect on the working of the internal laws of a kingdom. The difficulties arise from the bays and creeks which indent the coast, the sand-banks and islands which lie out to sea, and the water which flows between.

Difficulties in connection with a sea-board.

Importance of the question as it affects England.

Seeing, therefore, that the principle of English law is, that those who are born within the ligeance of the King are the King's subjects, it becomes of great importance to determine where the realm of England ends, where its setting of sea begins.

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Of the Realm and its Waters.

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In determining what are the limits of the realm of England from a practical standpoint, which to be practical for the purposes of the Courts of Law, must be as accurate as a survey would delimit them, we get no help from the definition given of the "British Islands" in the Interpretation Act, 1889; it declares merely that in Acts passed subsequently to that Act the term means "the United Kingdom, the Channel Islands and the Isle of Man." The absence of any reference to the outlying islands, rocks and banks, or of any mention of the interflowing waters, leaves the actual limits of the realm to be determined as occasion requires, by the help of certain principles to be derived from the decisions of the Courts, in the few cases in which the question has arisen.

The practical limits of the realm undefined by statute.

Statutory definitions.

[52 & 53 Vict. c. 63, s. 18 (2).]

In s. 9 of Territorial Waters Act, 1877, there is a wider definition of the "United Kingdom": it includes "the Isle of Man, the Channel Islands and other adjacent islands." Even assuming that the word "islands" could be construed to include sand-banks out at sea, the limited operation of the Act inevitably confines this definition to the purposes of the Act, and it therefore does not remove even the simplest of the questions involved, from the domain of judge-made law.

[41 & 42 Vict. c. 73.]

In the Sea Fisheries Acts of 1868 and 1883, the expression "British Islands" is defined to include "the United Kingdom of Great Britain and Ireland, the Isle of Man, the Islands of Guernsey, Jersey, Alderney and Sark, and their dependencies." But this again is only for the purposes of the Acts.

[31 & 32 Vict. c. 45; 46 & 47 Vict. c. 23.]

It is curious to note, that although the Territorial Waters Act applies to the whole of the dominions, there is no corresponding definition of the word "Colony": that it should also include the adjacent islands. It is, therefore, essential to point out at once that the principles to be presently discussed are applicable to all parts of the Empire. And in this connection, it must also be pointed out that the inter-national rule of recognition of the limits of States referred to in the preceding chapter, applies equally to the Colonies of States: and that other nations are

General principles applicable to limits of Colonies.

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bound to accept the express or implied delimitations of a Colony; and also to recognise the powers of government, whether limited or otherwise, with which those Colonies have been invested by the supreme authority.

The question of the limits of empire have arisen in Courts sometimes in connection with the administration of the municipal law, and sometimes in connection with actual claims to parts of the sea or large rivers, and occasionally to outlying land. The broad principles were laid down by Lord Stowell in the case of *the Twee Gebroeders.*

[3 Rob. Adm. 338]

General principles as to Acts establishing title to territory.

"The title is a matter to be established on the part of those claiming it, in the same manner as all other legal demands are to be substantiated, by clear and competent evidence. The usual manner of establishing such a claim is, either by the express recorded acknowledgment of the coterminous States, or by an ancient exercise of executive jurisdiction, founded presumptively on an admission of prior settlement, or of subsequent cession. One hardly sees a third species of evidence, unless it be, what this case professes to exhibit, the decision of some common superior, in the case of contested rivers."

[Vol. I p. 157.]

And Phillimore, in his work on International Law, speaking also of claims to parts of the sea, says—

"This claim is rested upon immemorial usage, upon national records, upon concessions of other States, upon the language of treaties;" a principle which naturally is equally applicable to claims to territory.

Claims to waters along the coast.

We shall deal first with the question as it arises in connection with the waters along the coasts: and the statement of a case, not so hypothetical but it might happen any day, will serve to show the nature and importance of the questions involved.

Nature of questions involved illustrated by hypothetical case.

A Frenchman and an Englishman are bathing in the Solent below low-water mark: the Frenchman murders the Englishman. The questions raised by these facts would be—Was the crime committed within the realm: or without the realm on the high seas; or within the territorial waters? On the answer depend the following important consequences. If the murder was committed within the realm it will be dealt with by the ordinary law of the land: If it was committed without the realm on the high seas, it will be triable in England if the case falls within the English high-sea legislation: If it was committed within the territorial waters, the ordinary criminal law will apply by statute, but the prosecution cannot be commenced without the consent of one of Her

Majesty's Principal Secretaries of State.

It is obvious that, with consequences so important waiting upon the answer, it should be possible to state that answer with precision. Yet it is shrouded in doubt: and the notable argument on the trial of Ferdinand Keyn for manslaughter warns us that, when the question arises, the doubt will not be removed without much controversy. We know that the realm extends at least to low-water mark: we know that estuaries, creeks and harbours, and other land-locked waters are included within its limits: but beyond this we know for certain nothing. There are some, indeed, who include within the dominions the 3-mile limit of territorial waters, an error which has arisen from the use of so misleading a name. But it must, before anything else can be made clear, be accepted as fundamental to the whole subject that, whatever virtues the protective zone of territorial waters possesses, it lacks one important attribute of sovereignty, the power to forbid innocent transit by foreigners. A dominion from which there is no right to exclude the foreigner, which he on his side has a right to enter, ceases to be dominion: for the sovereignty over it is not absolute. Nor, since we are dealing with sovereign and not individual ownership, can we find a golden bridge by treating this right of navigation as a mere easement, the ownerships being so different in character. The true nature of the sovereign rights over the territorial waters will be considered in due course; for the present it is sufficient and necessary to say that this belt of waters encircles the realm, but does not form part of it.

Shore to low-water mark, creeks, and harbours, included within the realm.

Territorial waters not included.

But there are other waters which do form part of the realm, which should with more propriety be called "territorial waters": but since that name has already been appropriated, they must be called for clear distinction "waters of the dominion"—the waters within "headlands that shoot beyond so as to make what are called Chambers."* Over these waters sovereignty is absolute; free navigation by foreigners is not as of right, but may be forbidden or made subject to regulations in the same way as passage over territory may be forbidden or regulated. And then this consequence immediately follows: the law of the land applies to them in its entirety, automatically, and without special words

Absolute sovereignty over "waters of the dominion."

The consequences.

* *The Twee Gebroeders*, 3 Rob.-Adm. at p. 341.

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of reference. They are within the jurisdiction both of the civil and the criminal Courts, with all the attendant consequences; foreigners are, like subjects, amenable to those jurisdictions: writs run, and extradition warrants may be executed thereon. In short, these waters are not the high seas, nor are they "territorial waters": they are an integral part of the realm whose shores they wash, and fall within the generic description "embayed waters."

Decisions on the subject.

But there is a difficulty, not in understanding the reason of the doctrine applicable to these waters, but in determining the limits of its application. We have two decisions to guide us, and as the judgments practically cover the whole ground, I propose to study them exhaustively.

28 L.J.: M. C. 66]

Case of murder by foreigner in the Bristol Channel.

In *R.* v. *Cunningham*, three foreigners had committed a murder on board a foreign ship in the Bristol Channel, at a spot which was proved to be not in the mouth of the Severn, but in the Channel itself, between the Glamorganshire and Somersetshire coasts, about 10 miles or more from Somersetshire. The question (to be considered at length in the second part of this book), arose whether the crime was committed within the body of a county, and hence within the realm, in order to determine whether the Courts had jurisdiction under the ordinary law. The case was of great importance, of equal importance indeed with that of *the Franconia* which was argued some years later. If the spot where the murder was committed was not within the realm, the crime would go unpunished: for this much of a complex subject may be treated as certain, that the English high sea legislation does not, in so far as it extends the criminal law to the sea, apply it to foreigners on board foreign ships.

Decision that the whole Channel is *intra fauces*.

The Court of Crown Cases Reserved held that the Channel, was part of the realm because it lay *intra fauces terrae*, and was within the adjoining county of Glamorgan for the purpose of laying the venue in the indictment; and that this was not limited to the part of the channel in question, but "that the whole of this inland sea between the counties of Somerset and Glamorgan is to be considered as within the counties by the shores of which its several parts are respectively bounded".

The safety of the realm from invasion, as well as the integrity of the King's peace are involved in this principle of dominion waters. It does not apply however to the sea along the open

coast, but only to the King's Chambers ; and the rule as to the sea being *intra fauces* makes the principle dependent entirely on the configuration of the land. The authorities dwell on the fact that the title is by occupation, and that this may be express or presumed. Even in the case of the Bristol Channel this fact was relied on as of importance :—

Title by occupation.

" The fact of the Holms between which and the shore of the county of Glamorgan the place in question is situated having always been treated as part of the parish of Cardiff, and as part of the county of Glamorgan, is a strong illustration of the principle on which we proceed."

But yet the principle seems equally clear that the occupation will be presumed where the configuration of the land shows that the safety of the realm demands it. Directly this is admitted the question of actual occupation would seem to be of little importance, though interesting from the point of view of the local jurisdictions : and Lord Blackburn's comments on *Cunningham's case* in the case of *Conception Bay* tend to support this view.

Configuration of the land.

The actual breadth of the Severn at the Holms is difficult to determine in consequence of the bends of the Channel : but taking the actual words used by Cockburn C. J.—" the whole of this inland sea between the counties of Somerset and Glamorgan is to be considered as within the counties"—we get a distance due north and south, from the westernmost point of Somerset to the opposite shore of Glamorgan, of 17 miles. But Lord Blackburn points out that the case reserved

Measurements of distance in Bristol Channel.

[L.R. 2 App. Ca. at p. 419.]

" incidently states that it was about 90 miles from Penarth Roads (where the crime was committed) to the mouth of the Channel, which points to the headlands in Pembroke and Hartland Point in Devonshire as being the *fauces* of that arm of the sea. It was not however necessary for the decision to determine what was the entrance to the Bristol Channel."

The distance between the Pembroke headlands and Hartland Point is about 50 miles. If the doctrine of *intra fauces* is strong enough to carry so wide an interpretation, assuredly the jurisdiction of the Courts of Assize would not be found wanting for the lack of evidence as to local usage in the matter, and which it would be difficult to find in the case of so broad an expanse of sea. However this may be, actual occupation is in fact looked to, and in the case of Conception Bay in Newfoundland there is a decision actually based upon it—*Direct United States Cable Co.* v. *Anglo American Telegraph Co.*

Importance of question of configuration.

Case of actual occupation. Conception Bay.

[L.R. 2 App. Ca. 394.]

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The question was whether the grant by the Legislature of Newfoundland of an exclusive right to a telegraph company to the use for its purposes of any part of the territory of the Colony, was infringed by another cable company which had laid a cable to a buoy in Conception Bay at a point more than 3 miles from the shore : in other words, the question was whether there was territorial dominion over the bay to warrant the grant made by the Colony. The bay is 20 miles wide at its mouth between Cape St. Francis and Split Point, and runs into the land about 40 miles, with an average width of 15 miles.

Judgment of Privy Council.

*[*Supra.*]

Lord Blackburn delivering the judgment of the Privy Council dwelt in the first place on presumed occupation ; he adopted as conclusive the decision in *Cunningham's case,** and as upsetting some ancient theoretical tests or guides to the application of the doctrine of *intra fauces* :—

He gave first a translated quotation from the Abridgment of Fitzherbert :

" *Nota per Staunton J.*, that that is not (*sance* which Lord Coke translates " part ") of the sea where a man can see what is done from one part of the water and the other, so as to see from one land to the other : that the coroner shall come in such case and perform his office, as well as coming and going in an arm of the sea, there where a man can see from one part to the other of the (a word not deciphered), that in such a place the country can have conusance &c."

Then follows a quotation from Lord Hale's *De Jure Maris*—

" That arm or branch of the sea which lies within the *fauces terrae*, where a man may reasonably discerne between shore, is, or at least may be within the body of a county, and therefore within the jurisdiction of the sheriff or coroner."

" Neither of these great authorities " continues Lord Blackburn, " had occasion to apply this doctrine to any particular place, nor to define what was meant by seeing or discerning. If it means to see what men are doing, so for instance that eye-witnesses on shore could say who was to blame in a fray on the waters resulting in death, the distance would be very limited : if to discern what great ships were about, so as to be able to see their manœuvres it would be very much more extensive :in either sense it is indefinite, "

Examination of old tests for presumed occupation.

After examining the full extent of the decision in *Cunningham's case,* the judgment then proceeds—

" Passing from the common law of England to the general law of nations as indicated by the text-writers on international jurisprudence, we find an universal agreement that harbours estuaries and bays land-

locked belong to the territory of the nation which possesses the shores round them, but no agreement as to what the rule is to determine what is "bay" for this purpose. It seems generally agreed that where the configuration and dimensions of the bay are such as to show that the nation occupying the adjoining coasts also occupies the bay it is part of the territory, and with this idea most of the writers on the subject refer to defensibility from the shore as the test of occupation: some suggesting therefore a width of one cannon shot from shore to shore, or three miles: some a cannon shot from each shore, or six miles: some an arbitrary distance of ten miles. All of these are rules which, if adopted, would exclud Conception Bay from the territory of Newfoundland, but also would have excluded from the territory of Great Britain that part of the Bristol Channel which in *R.* v. *Cunningham* was decided to be in the county of Glamorgan."

General agreement as to principle, but none as to its application.

R. v. Cunningham accepted as authoritative.

Referring again to the fact that neither jurists, nor text-writers, nor judicial decision, had laid down the rules as to dimensions and configuration by means of which the doctrine could be applied, Lord Blackburn added that if it were necessary to lay down a rule the difficulty of the task would not deter the Committee from attempting to fulfil it. It was however not necessary to lay down any rule for

"in point of fact the British Government has for long period exercised dominion over this bay, and their claim has been acquiesced in by other nations so as to show that the bay has been for a long time occupied exclusively by Great Britain, a circumstance which in the tribunals of any country would be very important. And moreover (which in a British tribunal is conclusive) the British Legislature has by Acts of Parliament declared it to be part of the British territory, and part of the country made subject to the Legislature of Newfoundland."

Examination of case from point of view of express occupation.

The following were the acts of dominion relied on—

Acts of dominion relied on.

(*a*)—A convention in 1818 between the United States and Great Britain by which the fishermen of the States should have the right to fish on the coasts, Conception Bay being excepted, but not to enter any bays except for shelter:

"It is true that the convention would only bind the two nations who were parties to it, and consequently that though a strong assertion of ownership on the part of Great Britain, acquiesced in by so powerful a State as the United States, the convention, though weighty, is not decisive."

(*b*)—The statute passed to give effect to the convention: which however went further, by imposing on all persons not being subjects the duty to observe the restrictions of the convention.

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with power to the Governor to order persons infringing them to depart from the bays :

"No stronger assertion of exclusive dominion over these bays could well be framed : and as there is nothing to justify a construction of the Act limiting it to bays not exceeding any particular width, this is an unequivocal assertion of the British Legislature of exclusive dominion over this bay as part of the British territory."

(*c*)—This assertion of dominion had not been questioned by any nation from 1819 down to 1872, when the Treaty of Washington was entered into :

"This would be very strong in the tribunals of any nation to shew that this bay is by prescription part of the exclusive territory of Great Britain. As already observed in a British tribunal it is decisive."

This treaty and the consequent Act of Parliament recognised the former statute in such a way as to make it clear that the right to legislate over the bays of Newfoundland, of which Conception Bay was one, had been conferred on the Legislature of Newfoundland.

Prescription.

A convenient term for this form of occupation is "prescription", and Lord Blackburn used it. It is marked by two of the essential ingredients of prescription : a claim to possess, and acquiescence express or implied. As between the nations there is no question of a presumed prior grant, and therefore the term is not in strictness accurate : but it is convenient, and there is this high authority for this application of the term to the requirements of international law.

The relative merits of the theories of express and presumed occupation.

The conclusive nature of the title by occupancy in this case gives I think undue prominence to the theory of prescription ; for it is inevitable that the more express occupation is dwelt on the less attention is paid to the inherent necessities of the case which it is the express object of the "configuration of the land" doctrine to care for. The two doctrines indeed are mutually exclusive : and where both concur and both are equally clear, the case for express occupation must inevitably weaken the case for natural acquisition. "Parts of the sea may be prescribed for", as by "the exercise of an ancient jurisdiction" : but of what use is it to appeal to a prescriptive title when the facts show an actual title in law ? It is only when there is a doubt as to whether the configuration of the land will support the case that the doctrine of express occupation becomes useful.

It would seem as it undue importance had been given to "express occupation" owing to the uncertainty as to what width of opening in the land the principle of *intra fauces* applies. But, now that those ancient theories of eye-sight and cannon-shot have been exploded, is it true to say that there is uncertainty as to what waters are warranted by the configuration of the land to be considered part of the dominions? We must accept these two cases as authoritative, and as finally disposing of the matter in so far as it concerns the waters which were examined. Even with regard to the question which was left in doubt in *Cunningham's case*, whether the whole of the Bristol Channel was within the realm, Lord Blackburn would hardly have referred to it in the manner he did if, in the opinion of the Privy Council, the limit of the realm in the Bristol Channel were not the line drawn between the Pembroke headlands and Hartland Point: more especially as it was followed by the somewhat laconic statement that their Lordships would not shrink from laying down a definite rule on the question if it was required of them. But apart from this, we have surely enough in these two decisions to guide us in dealing with other waters.

Uncertainty of *intra fauces* doctrine has given undue prominence to express occupation;

but the decisions have removed the uncertainty,

and are sufficient guides in other cases

The common law often has recourse to the maxim *res ipsa loquitur*, which sometimes settles difficult points. Is the question now in issue not to be settled by the same maxim? Is it not in the reason of things that the Bristol Channel, at least in great part, and Conception Bay, should be within the dominion? and it being admitted that these cases speak for themselves, do they not furnish us with a sufficient guide for the settlement of other cases? Thus, the waters within a line drawn from the Mull of Cantyre to Corsewall Point, measuring about 35 miles, are within a narrower angle of land than the Bristol Channel, and would seem to fall naturally within the realm. On the other hand the waters within a line drawn from Duncansby Head to Rattray Point, a distance of about 85 miles, would seen, from the wide angle in the land, not to come within the realm. There are indeed few bays as to which a glance at the atlas will not at once decide whether they are *intra fauces* or not. And there are, after all, only a limited number of bays as to which there can be any doubt.

Res ipsa loquitur;

applied to certain Scotch bays.

The influence of legislation on the question.

It may be that there are some on the border line, as to which the question cannot conveniently be determined by the eye, and

as to these it may be necessary to fall back on the express assertion of dominion. This assertion in many cases will rest on legislation, and as to this it is necessary to guard the rule with provisos : for it is not *any* legislation which will satisfy the test, but only such legislation as implies an assertion of dominion. Parliament does in fact legislate within certain limits for the high seas. In determining the doubt in any case, the fact that this high sea legislation applies to the waters in question could not be construed into a sign of occupation, or assertion of dominion, for the basis of such legislation is not dominion. And this is also true of special legislation, which, even though it applies to foreigners within the area affected, yet falls short of an assertion of dominion. In the case of the Act regulating the Scotch herring fisheries—52 & 53 Vict. c. 23,—provisions are made for protecting those fisheries in certain arms of the sea : the waters within the lines already referred to being among them. It will be seen hereafter that this legislation does not amount to an assertion of dominion, but is passed in virtue of a right of self-protection, which it will further be seen is not limited by bounds as is the right of dominion. Many difficult questions of construction arise with regard to these statutes, the gravest point in issue being whether they apply to foreigners. But with regard to embayed waters their essential characteristic is that *all* statutes apply to them, as they are passed, automatically as to the realm, and therefore the enquiry as to whether express occupation is proved by legislation must be directed to this point.

It must imply assertion of dominion.

Scotch Herring Fisheries Act :

does not assert dominion.

All legislation must apply automatically to embayed waters.

In determining the question whether in any given case this automatic application was intended, and has in fact taken place, the Courts may derive the answer from statutes which either expressly bring the waters within the realm, or which refer to them on the hypothesis that they have already been occupied : and, which must be equally true, may derive the opposite from the absence of such statutes, or from the existence of other statutes passed with an expressly specified object, and not aiming at anything more. The complicated nature of the necessary enquiry seems of itself to show that the question should be first determined by reference to the necessities of the case and the configuration of the shore, and that recourse should not be had to evidence of express occupation unless a doubt arises on this first point.

Effect of other statutes on the question.

In connection with land-locked bays one further point must be noted: the dimensions of the bay can have nothing to do with the question, if the whole of the surrounding shore belongs to the State claiming its waters: the vital question concerns only the measurement and position of the opening. If the shores belong to two States, a joint ownership would probably be established by mutual consent, as in the case of Passamaquody Bay—*the Schooner Fame*: but in the absence of stipulation the rights of the riparian States would probably go each to the middle of the bay.

Dimensions of the bay immaterial: tests to be applied to opening.

Bays surrounded by two States. [3 Mason 147.]

After the waters which wash the coast we come to the adjacent islands and rocks, and banks not submerged by the sea, and which are also included within the realm.

Adjacent islands, rocks and sand-banks.

And here again that question of the automatic operation of the law is manifestly one of great practical importance: it is indeed of greater moment in this case, for the high sea legislation which would apply to embayed waters if they were not part of the realm, does not apply to islands in the high sea; and therefore unless they fall within the limits of the realm, the law of "No man's land" must reign supreme upon them.

Importance of automatic operation of the law.

But we may yet derive some assistance from the principle of embayed waters: for islands which lie within the waters of the dominion are obviously themselves part of the dominion. As to those which are adjacent in the open waters, it seems probable that, for the same reason as in the case of embayed waters, occupation will be presumed where the occasions and the geographical conditions are such as to justify it.

Occupation presumed in certain cases.

As to express or declared occupation of these fragments of firm land there is, of course, no difficulty; but it is not probable that, save for the Norwegian law which declares that the "territorial waters" are to be measured from the outermost islands and rocks adjacent to the coast, which implies that the realm includes these islands and rocks, many examples of such a formal occupation are to be found; although, as we have seen, there are some definitions analogous to it in English statutes, but which are of limited and not of general application. The soundness of the principle of "presumed occupation" is therefore of the first importance in this case, and it is fortunate that here too we have precedent to rely upon: for it was adopted by the American Courts in the well-known case of the mud-banks at the mouth of the Mis

The Mississipi mud-banks.

sissipi — *the Anna.* And again here as heretofore the principle stands justified by the reason of the thing : for, so the judgment runs, if they do not belong to the nation to which they are adjacent, they may be occupied by another nation, and thus they may become a standing menace to its safety and its peace.

[3 Rob. Adm. 385]

The capture in the case of *the Anna* was made at the mouth of the Mississippi, and, it was contended, within the boundaries of the United States and therefore in violation of the territory of that nation.

Mud-banks in mouths of great rivers.

"In this case" said Sir William Scott, "a question arises as to what is to be deemed the shore, since there are a number of little mud islands composed of earth and trees drifted down by the river, which form a kind of portico to the land. It is contended that these are not to be considered as any part of the territory of America, that they are a sort of "no man's land", not of consistency enough to support the purposes of life, uninhabited, and resorted to only for shooting and taking birds nests... I am of a different opinion : I think that the protection of territory is to be reckoned from these islands : and that they are the natural appendages of the coast on which they border, and from which indeed they are formed. Their elements are derived immediately from the territory, and on the principle of alluvium and increment on which so much is to be found in the books, *quo vis fluminis de tuo prædio detraxerit, et vicino prædio attulerit, palam tuum remanet,* even if it had been carried over to an adjoining territory. Consider what the consequence would be if lands of this description were not considered as appendant to the main land, and as comprised within the bounds of territory. If they do not belong to the United States of America, any other Power might occupy them : they might be embanked and fortified. What a thorn in the side of America. It is physically possible at least that they might be so occupied by European nations, and then the command of the river would be longer in America, but in such settlements. The possibility of such a consequence is enough to expose the fallacy of any arguments that are addressed to show that these islands are not to be considered as part of the territory of America. Whether they are composed of earth or solid rock will not vary the right of dominion, for the right of dominion does not depend on the texture of the soil. I am of opinion that the right of territory is to be reckoned from these islands."

"Alluvium and increment."

Geological considerations important.

Without going into the questions which are suggested by "alluvium and increment", it is obvious that geological considerations must enter largely into the discussion, for not mud-banks only, but islands may be in fact as well as in law a continuation of the mainland.

The coral reefs which surround many tropical islands fall within the same principle: they obviously, as well as the sea within the reefs, form part of the territory of the Colony. Coral reefs.

Next in order we come to the dictum of Cockburn C. J. in *R.* v. *Keyn*, that "where the sea or the bed on which it rests, can be physically occupied permanently, it may be made subject to occupation in the same manner as unoccupied territory" As in the case of adjacent rocks and sand-banks not submerged, and for precisely the same reason, it seems permissible to say in the case of adjacent rocks and banks which are submerged, but which nevertheless are capable of physical occupation, that occupation will be presumed on account of their situation, and that they will be considered to be within the limits of the realm. For, if they are capable of being physically occupied and are not within the realm to which they are adjacent, they also might be occupied to the great danger of its peace, by another nation. Occupation of bed of the sea. [L.R. 2 Ex. D. at p. 199] Submerged rocks and banks.

And so occupation will be admitted, though not presumed, in the case of outlying rocks and banks, which, although submerged, are capable of occupation. Both these propositions seem undeniable in spite of Sir William Scott's *"undique pontus"*, and his application of it, *obiter*, to the case of the Godwin Sands, which he declared to be not within the realm of England, a dictum which I respectfully question. The Godwin Sands.

The commonest application of this principle of occupation of outlying rocks would be in the case of a lighthouse: for no question could arise as to the undoubted ownership in the rock by the nation which had erected the light. But in the case of lightships and buoys, it might be questioned whether in the absence of any other principle to govern the case, the tests of occupation are fully satisfied by mere anchoring to the bed of the sea. Lighthouses.

With regard to a lighthouse far out to sea it would follow from the occupation of the rock, that it would further be surrouded by a belt of territorial waters.

The dictum of Sir W. Scott above referred to occurred in his judgment in *the Twee Gebroeders*, which must now be quoted, as two other classes of cases are dealt with in it. Sir W. Scott's judgment in *the Twee Gebroeders.* [3 Rob. Adm. at p. 342]

It had been argued that as there were certain channels " which during the reflux of the sea carry down the river title of Eems a great way from the mainland", all that was river and not

sea, the channels being indicated by buoys. The learned Judge enquired—

"How far such streams beyond all capes and headlands are *at all times* of the flow of the ocean to be deemed mere river. In common understanding the *embouchure* or mouth of a river is that spot where the river enters the open space to which the sea flows, and where the points of the coast project no further. There may be shoals and sands beyond: as on the coasts of this kingdom, the Godwin sands: and buoys may be placed and they may be distinguished from the sea at low water: but what are these when the tide flows up, or at half tide, one way or the other? undistinguishably parts of the ocean—*undique pontus*. I will not venture to lay down anything more positively on this matter, than that the nature of such sea passages must be held to be, *divisi imperii*, between the ocean and the main land: and when the sea flows for navigation, they should rather seem to belong to the former than the latter."

Buoyed river channels running out to sea, when submerged by the tide become high sea:—a doubtful proposition.

It will thus be seen that Sir W. Scott dealt with a class of rocks and banks intermediate between those which we have already considered: rocks and banks which are submerged at high tide but awash at low tide. It is submitted that this distinction is unnecessary, for a principle which is applicable both to submerged and to unsubmerged rocks and banks, must be sufficient of itself to determine the question of dominion in this case also. I venture on two criticisms on this part of the judgment. First, as to the effect of high and low water. It may well be, as Cockburn C. J pointed out*, that for the purpose of determining the question of jurisdiction as between the Admiral and the civil Courts the line varied with the tide, for it was a question whether any given act was committed upon the waters of the sea: if it were, then jurisdiction belonged to the Admiral, for his jurisdiction was on the sea. But the land limit of the realm is set at low-water mark, the furthest point of uncovered land, irrespective of whether it is covered with water or not at certain times: for it is not possible that a question of extent of realm should be made to vary with the tides or anything else. Again, it seems to me that the dominion waters were confused with navigable waters; for the expression used is "where the sea flows for navigation". But the question is whether any navigable waters of the sea belong to the dominion: dominion waters are admittedly navigable, not of right, but only by implied license, and to be treated as non-navigable by States at war. It is therefore submitted that the principles already enunciated apply also to this case of rocks and banks.

Rocks and banks only submerged at high tide.

To be governed by same principle.

* L. R. 2 Ex. D. at p. 168

Effect of high and low water.

The limits of the realm cannot be variable.

Dominion waters distinct from navigable waters.

The second case dealt with in this judgment is where rivers are carried far out to sea by channels distinguishable at low tide, and buoyed so that they may be known at high tide. But the channels suppose the existence of banks between which the river waters run, not mixing with the sea for some miles, and it is submitted that the fact that these channels run out to sea beyond the *fauces* of the land can make no difference in principle. If the rule suggested as applicable to submerged sand-banks is sound it applies to this case : and indeed it seems but the corollary to the decision in the case of the Mississipi banks and islands, many of which must in fact have been wholly or partially submerged.

Channels carrying rivers out to sea, visible only at low tide ;

should be treated as submerged banks.

There is nothing in this extension of the principle which affects the rule as to the buoying of distant submerged banks : and there is no difficulty in accepting Sir W. Scott's dictum later in the judgment, that " the laying down buoys and beacons is not in its nature to be considered as a necessary indication of territory ".

Buoying of distant submerged banks not evidence of occupation.

Passing from rocks and sand-banks, the most important application of the principle of physical occupation, and consequent possession of the bed of the sea, is in the case of oyster, pearl and coral fisheries. The authorities which deal with river oyster-beds afford an all-sufficient volume of analogous precedent : but, even apart from such authority, it is not possible to imagine that the discovery and establishment of the fishery gives no right of property. For otherwise we should have this strange result, that islands rising from the bed of the sea may be occupied : that mines beneath the bed of the sea may be possessed* : but that the intermediate bed of the sea itself cannot be. The position seems so untenable that it is hardly necessary to appeal to an immemorial user, as Vattel has done, to support the ownership of the pearl fisheries of Bahrein and Ceylon : actual occupation must be sufficient. When these beds are practically in geological continuation of the mainland, with no deep water in between, there cannot be much difficulty in accepting the principle, though even here some care is necessary in stating the proposition : *occupation* of the deep sea bed cannot be dispensed with, even in such a case, and it must be such occupation as possession requires, and not mere buoying. This is the more important because

Fisheries on bed of the sea ;

must be the subject of property.

Appeal to immemorial user unnecessary.

* As to this see the judgment of Cockburn C. J. in *R. v. Keyn* (L. R. 2 Ex. D. at pp. 199 *et seq.*)

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that question of national safety, which is the basis of the presumed occupation of submerged sand-banks, does not arise in the case of these deep sea fisheries. And it is an essential point, as a little undue stretching of the principle of presumed occupation might lead to the proposition that the sea itself, above the fisheries on the bed of the sea where it is in continued geological formation of the coast, formed part of the realm; it is needless to say that such a proposition could not be maintained. While therefore occupation of the bed of the sea may perhaps be justified the more easily where the bed is in unbroken continuation of the soil of the coast, the principle cannot be limited to such cases.

Italian law as to property in new coral beds.

The Italian law awards property to its subjects who discover new coral beds in the adjoining seas : and it does not appear to have been in the contemplation of the law that distance from the shore, or geological connection with it, could make any difference in its right so to create and award property in the bed of the deep sea.† In fact many of the existing coral beds lie over 30 miles to sea from the Sardinian coasts. It does not appear further that the grant in such cases carries with it any claim on the part of the Government to the bed of the sea lying between the fishery and the mainland, so as to prevent a foreigner from fishing for coral at any point between a bed granted to an Italian and the shore : much less to the sea itself.

The Italian Government limits its grants to its own subjects. This raises curious and interesting questions which can only be suggested here, as all the materials necessary to the consideration of them are not available. Obviously the main question is—Does the existence of this Italian law preclude the acquisition of a coral bed by a foreigner who has discovered it, and who satisfies the tests of possession ?

Position of foreign discoverer of coral bed examined.

In order to answer this question we must fall back on the previous one—Does this claim to grant property in these deep sea fisheries repose on sovereignty ? If it does, then the extensions of the Italian territory beneath the surface of the sea would be most vague and ill-defined : in itself a formidable objection to the existence of such a claim. That the sovereignty arises *after* the discovery of the beds there can be little doubt, in virtue of the application to the bed of the sea of the rule (probably

† I have unfortunately to write here from memory : but I believe that what stands in the text is substantially accurate.

common to all nations) that a subject, though he may acquire property in unoccupied lands, yet acquires it subject to the sovereignty of the State to which he belongs. But then the extensions of sovereignty in this case become definite and known to all whom it may concern : nor can there be any inherent objection to it, for it is the inevitable consequence of the existence of such fisheries : so long, and this is fundamental, that there is no claim to possess the sea above the fisheries.

Advantages of claim to sovereignty over deep sea fisheries.

The advantages of such a claim to sovereignty over the coral beds when discovered are manifest. Quite apart from certain fiscal benefits to the State, it facilitates the settlement of disputes between rival discoverers : it enables offences to be more easily punished, as assaults by one diver on another, or the robbery of coral in the depths of the sea. The title of the law too would ensure recognition of the true owner in foreign Courts, should the question arise before them : as in a case of damage to such a fishery by the anchor of a passing ship : for the acts essential to the acquisition of property as expounded by Savigny would be held to be fully satisfied.

It seems doubtful, though I express this opinion with much hesitation, whether the position assumed by the Italian law goes further than this : and if this be so, then it would not act to the prejudice of a foreign discoverer of a coral bed. The difference between his position and that of the Italian would be that in the case supposed, of damage to the fishery by the anchor of a passing ship, he would be compelled to justify his title to ownership by evidence of complete possession.

All questions of law apart, the fundamental question underlying the principle of occupation of these fishery beds in the deep sea is eminently a practical one, governed in a large measure by the potentialities of the human body to carry on operations at great depths, or of human ingenuity in contriving means for bringing the produce of the sea bottom to the surface.

Irish oyster fisheries.

Although I have taken the Italian law for the purpose of examining the question, yet the subject has a practical importance for ourselves. The Irish oyster fisheries, by virtue of the Act 5 & 6 Vict. c. 106, s. 67, stretch out into the sea for a distance of about 23 miles from low-water mark between Lambay Island and Carnsore Point. The difference between the two cases lies in the fact that the Irish fisheries are treated continuously from the

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coast, whereas the Italian fisheries are treated as isolated from the shore.

All the questions likely to arise in connection with the subject seem to be disposed of in this brief summary of what is believed to be the law : and it does not seem necessary further to examine the question whether Sir W. Scott's dictum that "portions of the sea may be prescribed for " applies to the water above the fishery : for the practical aspect of the question would seem to decide it in the negative.

Water between islands and mainland.

From the soil under the sea we must revert to the sea itself. Just as the possession of bays carries with it the islands lying within the bays, so the possession of islands may carry with it possession of the waters within the islands and the mainland. An island or islands may, with the mainland, bring the intervening water within the principle *intra fauces terrae* ; or a chain of islands may of itself so lock in a body of water, even of great dimensions, as to bring it within the waters of the realm.

[3 Rob. Adm. at p. 341.]

Sir W. Scott, in *the Twee Gebroeders* treats this question delicately, and as not absolutely clear. Speaking of the Island of Ruttum, which lay about 6 miles from the shore of Groningen, he says—

" If the certain legal effect of an island lying out at sea, could be to appropriate to the mainland all the intermediate waters, this must belong to Groningen."

Although the learned Judge did not speak positively, the manner of reference to the subject tends to show approval rather than disapproval of the suggested rule. If it is sound, then the principles both of actual and presumed occupation would of course apply as before. It is submitted that it is sound, for the necessity for the inclusion of these waters is often more apparent in this case than in the previous ones. The Solent and the Spit are the most appropriate illustrations of it : and this, with great respect, in spite of the decision of the Privy Council in the case of *the Saxonia* that the Solent is the high sea.

Necessity for inclusion of the waters.

NOTE ON THE SAXONIA CASE.

[15 Mo. P. C. 262.]

The important part of the judgment in the case of *the Saxonia* is as follows—

" It is contended that if the Merchant Shipping Act does not affect foreign vessels on the high seas it does apply to all vessels navigating tidal river or estuaries within the limits of a county, and that the Solent must be considered to fall within that description. In our opinion the

The Inland Sea of Japan was also held to be high sea by the Consular Court of Shanghai in the case of the *Peninsular & Oriental S. S. Co.* v. *Japanese Government*. This case went on appeal to the Privy Council, and the judgment was reversed on another ground: the question therefore lacks elucidation by recent decision. It is nevertheless of first importance to nations composed of islands separated by narrow or broad channels. Two well-known instances seem to lie on either side of the dividing line. The broom at the mast-head is no longer needed to protest the freedom of the English Channel, for no one doubts that the "Four Seas" which we once claimed are free: and, in

Inland Sea of Japan. L. R. 1895. A.C. 644.

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statute cannot be considered to have any local application to the Solent, and to affect foreign as well as British vessels navigating within the limits of that channel: and that even if the statute were binding on all vessels navigating within a tidal river, which however the case of *the Fenord* discountenances, we think that it could not be locally binding within the water of the Isle of Wight and the mainland, and that the circumstance that the Isle of Wight is by local and territorial designation to be deemed a portion of the county of Southampton does not in any degree affect this question. We are of opinion that this collision must be considered to have taken place on the high seas, in a place where a foreign vessel has a right of sailing without being bound by any of the provisions of the statutes enacted to govern British ships."

NOTE on the Saxonia case, *contd.*

[Swab. 374].

There can be no doubt that this warrants the interpretation put upon the judgment in the text. I have however great doubt whether their Lordships intended to lay down so startling a proposition. The question was whether ss. 295 to 298 of the Merchant Shipping Act, 1854, applied to the case of a collision between a foreign and a British ship in the Solent, both ships being to blame. The part of the Act dealing with "Safety", in which these sections were to be found, applied only to British ships, and it had been held that where a British ship met a foreign ship on the high sea neither was bound by the statute. The key to the decision seems to lie in the following sentence—

Saxonia decision examined.

"The principle therefore by which this case must be decided must be found in the ordinary rules of the sea."

It seems possible that when their Lordships said that this case of collision must be held to have taken place "on the high sea", what they meant was, that as the statute did not apply to one of the ships in question, the case was *analogous* to the case of a British ship meeting a foreign ship on the high sea, and therefore was to be decided by the same principles *as if the collision had taken place on the high sea*. The question is now, by the Merchant Shipping Act of 1894, put on a different footing.

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spite of the opinion of the learned Consular Judge just referred to, it must be equally clear that the Inland Sea, the three entrances to which are each less than six miles wide, is part of the Empire of Japan.

So we come to a point in our enquiry which lies on the border-land between law and policy. The questions involved in determining the limits of the realm have been treated only as they would be treated by the Courts of Law: and so far as they concern the waters of the realm they differ essentially from the political doctrine of *mare clausum,* either in its old or modern form. That involves questions which are eminently controversial, and which do not fall within the scope of our enquiry.

Mare clausum.

A theoretical *mare clausum* is impossible: it must, if it exist at all, exist practically. To the power to forbid the entrance to that sea must be joined the intention to do it, signified, and carried into effect, and the assent or acquiescence of other nations thereto compelled.

But the principle of the "dominion waters" rests both on theory and on practice: the theory undertaking to deal with and explain the obvious necessities of the case. It would, indeed, be better were the girdle of our dominion drawn and well-defined, so that all nations might know and recognise it, and their subjects be forewarned of the law they must obey. This has in fact been done so far as Scotland is concerned, for the purpose of, and in order to protect, the Scotch herring fishery, by 52 & 53 Vict. c. 23: lines having been drawn from headland to headland and enveloping with a fishery limit the whole of that much-indented coast, one of which includes even the broad expanse of water ending in the Moray Frith. But we have not gone beyond this: and as it was with the 3-mile limit we had all been taught to believe in so strenuously, so it must be in the case of these dominion waters and territorial fragments: not till a crime has been committed in the Solent, as I have supposed, or upon some desolate rock off shore, will the principles which have been so far only hinted at become choate: like so many other principles we must wait for fuller knowledge till the occasion draw them forth from the judicial bosom. The delimitation of our Island kingdom rests with the Judges, and with this we may, as we must, be well content.

Chapter III.

Of the Territorial Waters.

Chapter III

From the dominion proper I pass to the belt of defensive waters which surrounds it, known as the " territorial waters ", or more commonly as the "3-mile limit". And here we have only one decision to look to, that of the Court of Crown Cases Reserved in *R. v. Keyn,* popularly known as *the Franconia case.*

The *Franconia case.* L.R. 2 Ex. D. 63.

The Judges were divided in opinion, six holding that the 3-mile limit had then an actual existence both in municipal and international law, while seven held that it had neither. Among these was the Lord Chief Justice of England, Sir Alexander Cockburn, who delivered a long and exhaustive judgment, from which, as it represents the opinions of the majority of the Court, the law must be taken.

The existence of a well-defined accurately measured 3-mile zone was at the time an article of legal faith : and further many believed that it was part of the realm. The decision put the question on its true basis. There was no statutory declaration of its existence. If it existed apart from statute it was simply a defensive zone and not part of the realm, over which the Courts had no jurisdiction inherent, but only such as Parliament had ordained : and that Parliament, except in a few isolated instances, had ordained nothing. Therefore, whatever the law of nations on the question might be, this much was clear, that Ferdinand Keyn, the master of the *"Franconia"*, a foreign ship, could not be tried before the English Criminal Courts for manslaughter, the result of an act of negligent navigation. He had run down the " *Strathclyde* " at sea below low-water mark, but within three miles from the shore, and one of the persons on board was drowned.

Effect of decision on question. of 3-mile limit.

But when he came to search for the authority of the law of nations on the subject, in order to answer the question whether the belt of waters finds its warrant in international law, the learned Chief Justice declared that he found nowhere any clear statement of principle : he found indeed many writers struggling for something, they knew not what, each asserting that some right

The limit non-existent.

of defence seaward existed, and so far in agreement ; but agreeing in no single detail as to what that right involved. The evidence of consent and universal practice of nations, either as to general principle or particular detail, he did not find. With the British Parliament silent how could he say that on our part there was acquiescence ? and with no evidence of the acquiescence of Great Britain, the law of nations lacked for him its most important factor—" To this hour " he exclaimed, " it has not, even in theory, yet settled into certainty ".

The Territorial Waters Act, 1878—41&42. Vict. c. 73.

Two years afterwards the British Parliament passed an Act, known as the " Territorial Waters Act, 1878 ", the details of which will be considered in due course. In passing it the Legislature assumed the responsibility which the Chief Justice declared it must assume before the Courts could act. It decided that it had the power to legislate for a belt of territorial waters, or defensive zone, the breadth of which it had the right to declare, and over which the rightful jurisdiction of the King extended and always had extended. What it in fact did was to regulate the exercise of that jurisdiction : and, more important still, to define its limits, in so far as they were not defined by other special statutes. That is sufficient for the Courts now, and so far as the territorial waters of the realm are concerned, it is binding upon them to enforce within them the law which Parliament has declared applicable to them.

Its general effect.

The question of recognition :

But still this does not answer the question whether the territorial waters are recognised by the law of nations : on this depends the recognition of the British zone by foreign Courts, and of foreign zones by British Courts : and the validity of the diplomatic justification by Governments for their dealings with foreigners on what would otherwise be part of the high sea. In order to establish this we have to find the consent or acquiescence of other nations in the principle. But here it is important to note to what the consent must be given. It must be to legislation dealing *with foreigners* on foreign ships within the zone : for legislation dealing with subjects or national ships falls within the ordinary competence of Parliament.

of legislation dealing with foreigners on foreign ships within these waters: Consent.

Consent implies express consent : but on such a question as that of the territorial waters an express approval is hardly to be looked for. An equivalent for it might indeed be found in decisions of the Courts of Law in any State recognising the ter-

ritorial waters legislation of another State in its operation against one of its nationals. Acquiescence however may be derived from the absence of diplomatic intervention in such circumstances.

Acquiescence.

In international law however the adoption of similar legislation is generally taken to imply acquiescence in the principle upon which the laws of other nations are based, and thus the consent of nations to any given principle is to be derived from the common practice of nations. Yet, since identity of practice on any given detail is not to be expected, an affirmative answer to "*placuitne gentibus?*" is to be inferred from the adoption of *similar*, but not necessarily of *identical*, legislation: and acquiescence in any given principle is reached when the incorporation of the principle becomes universal.

Form of acquiescence recognised by international law.

If acquiescence depended on the existence of identical laws, this would be sufficient to negative at once the existence of a "3-mile limit": for, neither in the scope of the legislation, nor in the actual distance seaward adopted, is there uniformity in the laws of different States. It was this lack of uniformity which pressed so much with Sir Alexander Cockburn. But if the sounder view is that the essential for acquiescence is the universal adoption of the principle of the legislation only, though there be much variation in the details, then it is impossible to resist the conclusion that the *principle* of the territorial waters is acquiesced in by all nations, and that it may be said now to form part of the law of nations.

Identical laws unnecessary;

laws based on identical principles sufficient.

Principle of territorial waters is acquiesced in;

But the recognition of territorial waters is part only of a larger principle. The legal embodiment of these waters has given their existence shape in such concrete fashion that the principle, of which they are but the familiar illustration is apt to be lost sight of: indeed an argument has been derived from the existence of these waters hostile to the principle on which that existence depends. This larger principle is the right of self-defensive legislation—which is the right of legislating as well for foreigners as for subjects on the high seas, within a varying distance from the shore, for certain purposes of vital interest to the State. It is as part of this principle that the custom has grown up with the acquiescence of the nations, of creating a definite defensive belt of waters *for general purposes*, within which rights analogous to those of territorial sovereignty are allowed to be exercised. This belt is called for convenience, and on account of the general

but as part of the larger principle,

of self-defensive legislation.

Chapter III

rights claimed within it, as distinguished from the special rights claimed to be exercised over larger areas seaward, the Territorial Waters.

Acquiescence dependent on reasonable exercise of right.

The details of the legislation affecting these waters is left to be determined by each Legislature according to its own view of the necessities of its case, acquiescence being accorded so long as it deals with those necessities in a reasonable manner.

As to right to regulate navigation.

It is generally assumed that there is an absolute right in the State to which they are appurtenant, to legislate specifically for, or to extend the whole body of the laws to, these waters. The decision in the case of *the Saxonia* referred to in the last chapter seems however to throw some doubt on the existence of the right to regulate navigation. With regard to the right to forbid or regulate fishing which undoubtedly does exist, there is, of course, one obvious limitation, not unimportant in consequence of the historic discussions as to the rights to the seal-fisheries in the Behring Sea.

Rights as to fishing.

An absolute property in the free-swimming fish in these waters cannot be created, for that would involve property in them when they go into the high sea. The fishing rights of the State in its territorial waters seem to be exactly analogous to the rights of the proprietor of an estate in the wild animals upon it : he has no property in them, but only the exclusive right to take possession of them. And so the State, in forbidding fishing by foreigners in its territorial waters, if it does so, creates for itself and for its subjects an exclusive right to take possession of the fish therein. If its legislation goes no farther than the regulation of fishing in these waters foreigners are bound by the law equally with subjects. It must not however be assumed that the right of fishery legislation is limited to the territorial waters : thus, the Italian Legislature has created for the exclusive use of its subjects a *mare piscatorium*, 5 miles in width, irrespective of its territorial waters, and irrespective of its coral fishery laws already referred to. The subject will be dealt with at a later stage ; it may be said now however that deep sea fishery laws fall within the principle of self-defensive legislation, and as such it is expected, it not presumed, that they will be recognised by other States. Conventions between the States co-terminous with the fishery, and the consequent special legislation, often take the place of general fishery legislation. For the present the essential point to bear in mind is

Italian *mare piscatorium.*

Fishery legislation and conventions.

that the existence of the territorial waters gives the State no exclusive fishing rights, but only enables the State to expressly declare them.

Rights and duties by law of nations.

The law of nations, however, while it reserves the belt of territorial waters for the exclusive exercise of the legislative power of the State, has established two principles: on the one hand, with regard to the State itself—the innocent passage of foreign vessels cannot be forbidden; to this extent therefore these waters preserve their high sea quality: on the other hand, with regard to other States—in time of war, hostile operations of every description, or operations incidental to or consequent upon the war, may not be carried on within the territorial waters of neutral nations: if they are carried on inside it is a violation of neutrality, and in this they lose their high sea quality. This question, however, belongs more properly to the law of the high sea in time of war.

No power to forbid innocent passage.

Warlike operations within territorial waters a violation of neutrality.

Limit to be reasonable but limits vary in different countries.

The essential point is that the distance seaward to which the belt is extended must be reasonable. We are accustomed to talk of the "3-mile limit": but, bearing in mind the premiss on while the whole question rests, we cannot expect to find universal agreement on the point—"Great difference of opinion and uncertainty have prevailed, and still continue to exist". Thus the Norwegian law extends the limit to rather more than 4 miles: the Spanish law to 6 miles: while some States still adhere to the undetermined "cannon-shot".

[*see* Part II, Chapter IX.]

We ourselves have accepted the traditional 3 miles, and the signatory Powers to the North Sea Fishery Convention seem to have agreed to the same width: but it by no means follows from this, that our Courts would decline to recognise the larger limits adopted by other States. On the contrary, the current of opinion would seem to be in favour of the general principle of recognition suggested above: and that, except in extreme cases, the comity of nations would require the Courts to hold that a State is the best judge of its own necessities.† Indeed Marshall C. J. declared in *Church* v. *Hubbart*, that what is sufficient for one State need not of necessity be sufficient for another: that what is sufficient for an island, may be altogether insufficient for a country with a large extent of coast-line.

English Courts not precluded from recognising wider limits than 3 miles.

[*cit.* L. R. 2 Ex. D. at p. 215.

† It is said that Great Britain and the United States have protested against the Spanish claim to a belt of 6 miles: *see* Wheaton's "International Law" (2nd. English Ed. p. 239). This however seems to have occurred in 1874.

The zone of defence cannot therefore be constant for all countries : and indeed it is hardly necessary to point out that the chief advocate of its existence had nothing whatever of accurate measurement in his mind.

Bynkershoek's formula.

Bynkershoek's formula "*potestas finitur ubi finitur armorum vis*" was a telling one : his application of it was the extent of cannon range. Succeeding publicists adopted three miles as the extent of that range in the times in which they lived and wrote. But the arms of war have something more than doubled their effective range : and while some publicists of a later generation have expressed an opinion that the breadth of the zone of defence should be correspondingly increased, others have pointed out that the modern arms of precision have now so great a range as to render futile any reference to them for the purpose of defining the territorial waters.

Reference to *armorum vis* is misleading.

Indeed, the reference to arms is itself misleading. The zone of waters is not protective against hostile invasion : so far as it has relation to warlike operations, the *armorum vis* could only be resorted to to keep belligerent ships from fighting within the zone. Civil laws are not now supported by force of arms—except the Hovering Acts : and these hardly need the protection of the extreme range of cannon shot, until the time for pursuit arrives, at which time the limits of the territorial waters are ignored.

The Act of 1878.

The practical aspect of the question for the British Empire is embodied in the Territorial Waters Act, 1878.

At the time the judgments were pronounced which declared Ferdinand Keyn not to be triable in England, there existed the ordinary high-sea legislation, a few isolated statutes which recognised the 3-mile limit for certain purposes, and also a certain amount of legislation which ignored that limit : but of general legislation for a defensive zone there was none. Parliament had not availed itself of the right to assert jurisdiction over such a belt of waters. It did so two years later, and it is to this Act, and to this Act alone, that we must look to ascertain what general jurisdiction exists in our territorial waters.

[*see* Part II, Chapter V.]

It is impossible to over-rate the importance of this Act ; nor, having in view the functions it was supposed to perform, and the language with which it sets about the performance, is it possible not to be disappointed at the conclusion. The preamble begins thus—

"Whereas the rightful jurisdiction of Her Majesty, Her Heirs and Successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and of all other parts of Her Majesty's dominions to such a distance as is necessary for the defence and security of such dominions :—"

It may be, of course, that this language was intended to convey what Sir Alexander Cockburn declared to be the law: but whether it was so intended, or was intended to express a view hostile to that judgment (a view which indeed did not want for expression at the time), the statute did not go to the full extent to which that judgment warranted, for it extended part of the law of England over the territorial waters, and part only—the law relating to the trial and punishment of offenders. After the preliminary declaration as to the rightful jurisdiction of the Sovereign over these waters, the preamble proceeds to declare it to be expedient that all offences committed within these waters, by whomsoever committed, should be dealt with according to law; the special extension being to persons on board foreign ships. Yet even in this the Act is disappointing; for the method adopted for dealing with the necessities of the case, was to declare that subjects should be triable in the ordinary way—a result which might have been attained without reference to the territorial waters: but that interposed between the offence and trial of a foreigner, there should be the consenting certificate of one of Her Majesty's Principal Secretaries of State. The Act thus declares it to be expedient that the "rightful jurisdiction" of the Sovereign in these waters should be exercised, yet makes the Secretary of State the judge of the expediency in every individual case in which a foreigner is concerned. This may of course mean that the Secretary of State is to satisfy himself that there is sufficient evidence to warrant a prosecution.

The Act does not bear out the preamble.

Offences by foreigners in territorial waters.

The detailed examination of the statute must be reserved until the principles involved in extra-territorial legislation have been established; for the present one general remark must suffice: not only in this interposition of an executive view of the expediency of the trial, but also in the omission of civil jurisdiction, the Act declares something to be, and always to have been, existent, which it then proceeds to show does not exist. Further, the trial of foreigners for offences on board British ships in these waters

General criticism of the Act.

is made subject to the same power of the Secretary of State. In this the Act diminishes the ancient jurisdiction of the Courts ; for if the offence were committed on the high sea, the Courts have in such cases jurisdiction in virtue of the laws which affect British ships on the high seas. This question will be fully examined in the second Part of this book.

In the result, therefore, both British subjects and foreigners on board British or foreign ships in the territorial waters of England, are out of the jurisdiction, save only in respect of offences committed on board and within those territorial waters : for such offences, they are to be arrested tried and punished in the same way as for other offences within the jurisdiction of the Admiral. From this it follows that the process of the civil Courts does not run within the territorial waters ; it seems more than doubtful whether extradition warrants can be executed : and ships are, for all purposes not within the Act, on the high seas. But so much of the high sea legislation as relates to matters not falling within the purview of the Act, applies within the territorial waters, and the common law is in force on British ships therein as it is on the high seas.

Summary of the law as to the territorial waters.

There is one important question of detail which is omitted from the Act. The limit is defined to be " a marine league from the coast, measured from low-water mark ". This apparently brings the territorial waters into conflict with the dominion waters. But on closer examination of the definition of territorial waters, it will be found that the dominion waters are probably themselves included, the 3-mile belt being created expressly in the " open sea ". This question will also be examined at greater length hereafter, but for the present it is important to note that the belt should run outside the realm, including the waters of the realm. But then there is a difficulty as to the measurement of the marine league from low-water mark ; and it is difficult to predict how the Courts would deal with it.

Conflict between territorial belt and dominion waters.

The practical solution would be to allow the territorial waters to merge into the dominion waters where the 3-mile limit strikes the outer line of these waters; for it might reasonably be supposed that all the purposes of the territorial belt would be fulfilled by the dominion waters. It is doubtful whether the Courts would be free to create such a principle. The declaration

A practical solution suggested.

of the exclusive fishery limits in the Hague Convention is so worded that warrant might be found in it; but, as we shall presently see, this is not free from doubt.

There is, however, to be found in the books a principle which has some analogy to this solution, which is known as the "Headland doctrine." This, as I understand it, is somewhat as follows—If the line of the 3-mile limit were to follow too accurately the sinuosities of the coast-line it would be difficult, if not impossible, to keep it traced with certainty. There would be little loops and lakes of high sea at all the indented points of the coast; and, as in the case of the dominion waters, so in the case of the territorial waters, it is manifestly to the advantage of all concerned that so artificial a boundary to the jurisdiction exercised within it should be as definite as it is possible to make it without buoying, so that the point of transition from the known law governing those who are on board ship to the unknown law of some foreign State should be recognisable to mariners without much difficulty. Therefore, although the trend of the shore is followed by this imaginary belt, the headland doctrine straightens it as much as possible on its outer edge by allowing it to leap from headland to headland, making within these leaps broad expanses of territorial waters. The leap, it will be understood, is not, strictly speaking, from headland to headland, but between two imaginary points lying 3 miles to sea from low-water mark off the headlands. The doctrine must therefore in practically all cases in which it applies, extend the limits of the belt beyond 3 miles at all points of the coast-line within the headlands.

Headland doctrine.

[*cf.* p. 30.]

The difficulty in accepting this doctrine is twofold. First, the Act contains no warrant for it: secondly, it is, within the limits of its own application, as much in conflict with the principle of the dominion waters as the simple 3-mile limit.

Difficulties in applying this doctrine.

The headland doctrine probably owes its existence in the books to the declarations in the sea-fishery conventions with France and the North Sea Powers. These declarations were made in both cases in respect of "exclusive fishery limits;" but the question of the territorial waters is involved, for the object of the Hague Convention is to "regulate the police of the fisheries in the North Sea *outside territorial waters*."

Declaration as to territorial waters in the Hague Convention.

Chapter III

The second article of the Convention is as follows:—

[*cf.* 46 & 47 Vict. c. 22, sched. art. 1.]

"The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole coasts of their respective countries, as well as of the dependent islands and banks.

As regards bays the distance of 3 miles shall be measured from a straight line drawn across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles.

The present article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the Powers to whom the shore belongs."

If there is any warrant in law for the headland doctrine, it must be found in the confirmation of this provision by the Sea Fisheries Act, 1883. But this is part of a larger question, whether this Act has in any other way amplified the definition of territorial waters in the Territorial Waters Act, for in this the not unimportant sandbanks and coral reefs are omitted. There is indeed a still more important question to be considered: whether the effect of the Sea Fisheries Act has not created for all purposes the belt of territorial waters round the British dominions, and so supplemented the Territorial Waters Act under which criminal jurisdiction alone can be exercised in those waters. But the discussion must be postponed until the intricate questions involved in the sea-fishery legislation have been examined.

[*see* Part II, Chapter IX.]

NOTE ON WARLIKE OPERATIONS IN TERRITORIAL WATERS.

I have, on p. 35, adopted the proposition which is commonly accepted, that warlike operations by belligerents in the territorial waters of a neutral state is a violation of neutrality. This statement proceeds on the assumption that the State in question has created for itself such a protective belt of waters. But, if the basis on which this chapter proceeds is sound, Great Britain stands in the peculiar position of having no territorial waters for general purposes, but only for the special purposes declared by the Territorial Waters Act and a few other isolated statutes. If this be so, it seems more than doubtful whether the above proposition can hold good in the case of Great Britain. The importance of the suggestion made in the last paragraph with regard to the possible effect of the Sea Fisheries Act on the question becomes apparent.

There is yet another point of importance—whether the belligerent right of search can be exercised in territorial waters which in fact exist. As they still remain high seas, it seems probable that this right can be exercised in them, though not, of course, within dominion waters.

Chapter IV

Of Nationality.

A

NATIONALITY AT COMMON LAW.

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Common law rule as to nationality.

The common law of England recognised as the test of English nationality, birth within the realm—*jus soli*—and not descent from English ancestors—*jus sanguinis*. Every person born within the realm was a British subject, and every person beyond the realm was an alien. To this hard and fast rule there were but few exceptions.

Exceptions to the common law.

Children of Sovereigns.

(i)—*The Children of the King.*—

The children of the King born abroad are not within the operation of the rule, but are British subjects. The statute of 25 Edward III, which will be considered presently, is declaratory of the common law so far as the children of the King are concerned; the prelates and nobles of the realm had said eight years previously—

[*cf.* p. 47.]

> "that there was no manner of doubt that the children of our Lord the King, in whatsoever part they might be born, whether within the sea or beyond, would bear the inheritance of their ancestors."

And the prelates, earls, barons and other wise men of the Council repeated this in 1552, with one assent declaring that this is the law of England and always had been, and approving and affirming it for ever.

Sir Alexander Cockburn has doubted whether the statute was declaratory of the common law; but it is probable that the doubt relates only to the remaining provisions.

There also can be no manner of doubt that the rule extends to the children of foreign Sovereigns born within the British dominions, as part of the immunity from the operation of the law which hedges the kingship.

Lord Coke laid down, in *Calvin's case,* the doctrine which underlies this first exception—the dignity of King is universal: "for if a king of a foreign realm come into England, by the leave of the King of this realm (as it ought to be), in this case he shall sue and

[Rul. Ca. II: pp. 604, 605.]

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be sued by the name of a King" : and again "though the King be in a foreign kingdom, yet he is judged in law a King there."

Children of ambassadors.

(ii)—*Children of the King's Ambassadors.*—

It is also agreed that the children of British ambassadors, although born abroad, are British subjects : and the converse of the rule holds good ; the children of a foreign ambassador accredited to Great Britain, are held to be the subjects of the King whose ambassador he is. There is no definite decision on the subject, but it is always assumed, and was referred to by Lord Coke in *Calvin's case*. The only difficulty about the rule is one which is common to all rules which are assumed and not expressly enunciated : its extent has never been worked out.

The rule a direct consequence of the personal exterritoriality of the King's representative.

It seems clear that it is the natural consequence of the personal exterritoriality of the ambassador, and does not need so narrow a reason to support it as that given by Westlake, and apparently approved by Sir A. Cockburn, "that an ambassador's house is reputed part of his Sovereign's realm", for that is but an incident of his exterritoriality. Indeed the suggested reason is unsound : for the ambassador's children are not necessarily born in the Embassy, and the exterritorial privilege of the house extends to all who are actually present though not resident in it. It is not necessary to go beyond the fact that the ambassador is the actual representative of his Sovereign, and he is therefore invested personally with a privilege which is essentially a kingly privilege. If this is accepted as the true reason it settles other questions which do not seem so far to have been considered. It would not extend to the staff, although they are included in some of the other privileges, such as immunity from arrest : nor would it extend to consuls to whom sometimes by convention, sometimes by comity, a somewhat similar privilege is extended ; nor to any officials who are not personal representatives of their Sovereign. But it would probably apply to ministers and chargés d'affaires, who in some sort occupy the same position of representing the Sovereign at a foreign court. But again it would not apply to an ambassador journeying in a country to which he is not accredited. From the nature of the case, the rule has no application to Viceroys or Governors under any circumstances.

Rule does not extend to the staff.

Officers included in the rule.

(iii)—*Children of the King's Soldiers.*—

Children born abroad whose fathers are in the military service

of the Crown abroad, do not fall within the application of the common law rule, but are British subjects. There seems to be a doubt however whether this exception depends on the common law or on the statute of 25 Edward III.

All the argument in *Calvin's case* tends to show that it is part of the common law. Stated shortly that argument is, that subjects who go abroad with the King in his wars are still within the ligeance of the King : that as they remain under their King's ligeance, his protection goes with them, for allegiance and protection go hand in hand, and where one exists, even though it be beyond the realm, the other under normal circumstances exists also. There may possibly be some question whether this old doctrine, which comes from the time when Kings themselves went to the wars, applies in modern times, but is submitted that the whole drift of the argument tends to show that it does. In *De Geer* v. *Stone* however, Kay, J., denied the existence of the principle. The learned Judge based himself on the Parliament Roll 17 Edward III, which he seems to have considered as an exhaustive statement of the common law. He said with regard to it—

[Rul. Ca. II.]

[L.R. 22 Ch. D. 243.]

> " It is not alleged that this has the force of an Act of Parliament, but it is cited as an authoritative statement of the law which, from its antiquity is worthy of respect. But it must be observed that the statement though emphatic as to the children of the King of Great Britain, is by no means so as to the children born of persons in the service of the King. The great doubt and difficulty which are said to have existed must be as to these latter, because it is stated that there is no manner of doubt as to the children of the King born abroad."

There is it is true a reference to the children of certain nobles in the statute of 25 Edward III ;* but it was not intended to settle the question only for the soldiers, who had been in the King's service in the wars, but also for the common profit of the people, many of whom had begun to trade abroad. The fact that a general law was passed does not preclude the possibility of part of it being based on the common law.

[* see p. 47.]

The case of children of soldiers born abroad seems to be covered by the statutes.

It might appear at first sight, and it was in fact suggested by Kay, J., that the statutes are sufficient for all the purposes of children born abroad, whose fathers are on military service : but bearing in mind that subsequent residence in England does not convert the statutory nationality into common law nationality,

and further that the nationality of the third generation may depend on the merest accident, it is of importance that the question should be put on its proper basis : and it is submitted that the learned Judge's denial of the principle was *obiter,* and not warranted by the legitimate deduction from *Calvin's case.*

The facts in the case of *De Geer* v. *Stone* raised an entirely different question, in connection with the nationality of a certain family, the Mackays, the service abroad not having been the service of the King. Æneas Mackay served in Holland in the "Scotch Brigade" in the war between England and Holland and their allies against France at the close of the 17th century : but after 1697, the Brigade ceased to be on the establishment of the British army, though officered by British subjects. From that time the service abroad of the Mackays was not even as soldiers of an ally, when possibly the rule we are considering would apply : and therefore the status of British subject would not be acquired by a child of a person in such service unless he fell within the operation of the statutes. From these facts it will be seen that the case did not fall within the principle of *Calvin's case.*

The case of the Mackays did not fall within the rule in *Calvin's case.*

Service abroad with an ally.

Children of enemies born within the realm in the time of war.

When we come to consider the converse case, that of foreign children born of alien enemies in time of the war within the realm of the King of England, the importance of admitting the exception to the common law rule because apparent : for, as in the previous cases, a rule which depends on the common law must be equally applicable to the two aspects of the question, and this converse case is not governed by statute. This is expressly dealt with in the argument in *Calvin's case :*

[Rul. Ca. II, p. 607.]

" For if enemies should come into the realm, and possess town or fort, and have issue there, that issue is no subject to the King of England, though he be born upon his soil, for that he was not born under the ligeance of a subject, nor under the protection of the King "

Rule not applicable to prisoners of war.

The rule in *Calvin's case* would not apply to prisoners of war, for in their case though the allegiance remains, the protection has ceased, and the twofold condition of allegiance and protection is therefore wanting.

(iv)—*Persons born under the Flag.*—

Children born on British ships at sea :

It is further stated that a person born on board a British ship on the high seas, in the allegiance of the Crown, is at common law

British subject. It is needless to say that such a question could not arise under the *jus sanguinis*, but owes its origin entirely to the *jus soli*. The case of *Marshall* v. *Murgatroid* is an express authority for this proposition. A bastard child had been born on a British ship on the high seas, and the question was whether an order could be made by the Justices on the putative father in England, under a statute which only applied to England and Wales. The Court held that the English ship being part of England by the common law and the law of nations, the order could be made. It must be presumed that the decision would have been the same if the point had arisen under a statute applicable only to Scotland, or to Ireland.

[L. R. 6 Q. B. 31.]

decided to be British subjects.

This proposition is also sometimes inferred from criminal cases such as *R.* v. *Anderson*, and *R.* v. *Carr*, in which the jurisdiction over persons in British ships at sea was in issue, and in which the Judges held that there was jurisdiction to try offences irrespective of express legislation. Their judgments were based on the territory or "floating island" theory; as to which it may be here observed that, in referring to it in *R.* v. *Keyn*, Cockburn C. J. did not go further then to say that a ship "*had been likened* to a floating portion of the national territory". The law as to British ships on the high sea will be discussed at length hereafter; it is however possible to determine the question of the nationality of persons born thereon from another standpoint. Though ships are not within the inherent jurisdiction of the Courts, they are within the jurisdiction of the King in his office of Admiralty, of which the flag is the symbol. Protection follows the flag at sea just as much as it follows the flag on land abroad: and therefore, without going into the complicated question whether a ship is actually a floating island, it seems possible to say that the same reason which makes children born abroad British when the father is in the military service of the King, would make children also British when they are born under the flag at sea. For, according to the theory of the law, the allegiance of the child when born is claimed by reason of the protection with which he is enveloped. And it may be observed that in the "floating island" cases the protection of the flag is always referred to.

[L. R. 1 C. C. R. 161.]

[L. R. 10 Q. B. D. 76.]

Proposition not to be inferred from criminal cases.

[L. R. 2 Ex. D. at p. 161.]

Nationality follows the protection of of the flag:

as in the case of soldiers on active service abroad.

There are many variations in the circumstances on which the question of nationality may depend. Thus the ship may be a man-of war or a merchant ship: she may be on the high seas or

Different circumstances under which the question may arise.

Chapter IV

in British territorial waters, or in foreign territorial waters, or in a foreign harbour or tidal river, or in the dominion waters of a foreign State—the decision as to the nationality of persons born abroad depends on whether the law of the flag prevails in any of these circumstances, which itself depends on other circumstances to be presently considered.

Registration of births at sea.

It may be observed that the registration of births on board British ships at sea is provided for by 37 & 38 Vict c 88, s 37, and also by s. 254 of the Merchant Shipping Act, 1894.

It would serve no practical purpose here to compare the respective merits of the *jus soli* and the *jus sanguinis* as the guiding spirit for a national law of nationality. Force of circumstances, isolation from or contiguity to other nations being one of the most forcible, has led one nation to adopt one principle, another to adopt the other, and some modified forms of both.

Jus soli adopted as suited to the national circumstances. [at p. 7.]

The *jus soli* was the most natural for the old common law of England to have adopted. As Sir A. Cockburn, says in his book on Nationality—

"This rule, when originally established, was not unsuited to the isolated position of this island and the absence of intercourse with foreign nations in Saxon times. No children of English parents being born abroad, or children of foreign parents being born within the realm, the simple rule that to be born within the dominions of the Crown constituted an Englishman answered every purpose."

But there is hardly a fundamental rule of law which commerce has not bent to its necessities, and this rule of nationality among the first: Sir A. Cockburn continues—

"But when the foreign possessions of our Kings and the increase of commerce had led to greater intercourse with the continent, and children of English parents were sometimes born abroad, the inconvenience of the rule which made the place of birth the sole criterion of nationality soon became felt.

"It appears from the Parliamentary Rolls of the reign of Edward III; that as early as the 17th. of that King (1343), doubts having arisen whether even the King's sons born without the realm could inherit, the Archbishop of Canterbury brought the question before the Lords. The Lords replied unanimously that the King's sons could inherit; wherever born, but that with regard to children of other persons there were great difficulties in deciding the question."

The doubts as to the nationality of the King's sons are

surprising, for it was in Edward III's reign that the practical necessities of our invasion of France called into being the rule as to the exterritoriality even of soldiers. But the doubts as to the children of other persons seem to have been hardly doubts, but a protest against the stringency of the old rule of the common law, and a demand for its modification, caused by the commerce which followed on the conquests of the Kings. So we find that—

In convenience of the old rule,

" the matter was again brought before the Lords and Commons jointly, who concurred in the opinion previously given by the Lords, and recommended that a law should be passed on the subject, but, as Parliament was about to be prorogued, 'et ceste besoigne demand grant avisement et bone deliberation coment ele se purra mieltz faire, et plus surement,' the further consideration of it was deferred."

led to the subject being dealt by statute.

Owing to the plague, legislation on this and other subjects was not resumed till the year 1350, when the Act 25 Edward III, stat. 2 was passed, entitled " *A Statute for those that be born beyond sea* ".

B

NATIONALITY BY STATUTE.

Nationality by statute.

This statute of Edward III still remains on the statute book, though it has now little more than a historic interest. Lord Bacon, arguing in *Calvin's case,* advanced the theory that the statute was only declaratory of the common law :

25 Edw. III not declaratory of the common law.

" but this view is hardly consistent with its language, which is prospective, and it has been pertinently observed that if the Statute had only been declaratory of the common law, the subsequent legislation on this subject would have been wholly unnecessary."*

*[Sir A. Cockburn, "Nationality" at p. 9.]

As has been already pointed out, this comment must relate to that part of it which deals with the doubts as to the inheritance of the children of other persons, and not of the children of the King, or, as we have seen, of the King's soldiers.

The Statute runs thus—

25 Ed. III, stat. I.

Statute of 25 Edw. III.

Our Lord the King... considering the great mischiefs and damages which have happened to the people of His realm of England, as well because that the statutes ordained before this time have not been holden and kept as they ought to be, as because of the mortal pestilence that late reigned, and willing to provide for the quietness and common profit of his said people convenient remedy : therefore by the assent of the prelates, earls, barons, and other great men, and all the commons of his

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said realm summoned to the Parliament, hath ordained and established the things underwritten, *videlicet*—

Because that some people be in doubt if the children born in the parts beyond the sea, out of the ligeance of England, should be able to demand any inheritance within the same ligeance, or not, whereof a petition was put in the Parliament late holden at Westminster, the seventeenth year of the reign of our Lord the King that now is, and was not at the same time wholly assented: our Lord the King, willing that all doubts and ambiguities should be put away, and the law in this case declared and put in certainty, hath charged the said prelates, earls, barons, and other wise men of his Council, assembled in this Parliament, to deliberate upon this point: all of which of one assent have said, that the law of the Crown of England is, and always hath been such, that the children of the Kings of England, in whatsoever parts they be born, in England or elsewhere, be able and ought to bear the inheritance after the death of their ancestors: which law our said Lord the King, the said prelates, earls, barons, and other great men, and all the commons assembled in this Parliament, do approve and affirm for ever.

And in the right of other children born out of the ligeance of England in the time of our Lord the King, they be of one mind accorded, that Henry son of John de Beaumond, Elizabeth daughter of Guy de Bryan, and Giles son of Ralph Dawbeny, and other which the King will name, which were born beyond the sea, out of the ligeance of England, shall be from henceforth able to have and enjoy their inheritance after the death of their ancestors, in all parts within the ligeance of England, as well as those that should be born within the same ligeance.

And that all children inheritors, which from henceforth shall be born without the ligeance of the King, whose fathers and mothers at the time of their birth be and shall be at the faith and ligeance of the King of England, shall have and enjoy the same benefits and advantages, to have and bear the inheritance within the same ligeance, as the other inheritors aforesaid in time to come: so always, that the mothers of such children do pass the sea by the licence and wills of their husbands. And if it be alleged against any such born beyond the sea, that he is a bastard, in case where the Bishop ought to have cognisance of bastardy, in shall be commanded to the Bishop of the place were the demand is, to certify the King's Court where the plea thereof hangeth, as of old times hath been used in the case of bastardy alleged against them which were born in England.

Statute of 7 Anne.

In 1708 was passed the statute 7 Anne, c. 5, the avowed object of which was the naturalization of all foreign protestants within the realm. Section 3, which alone survives, the remainder having been repealed by 10 Anne, c. 5, deals generally with the nationality of children of natural-born subjects born out of England: it runs as follows:—

7 Anne, c. 5, s. 3

The children of all natural born subjects born out of the ligeance of Her Majesty Her Heirs and Successors shall be deemed and adjudged to be natural born subjects of this Kingdom to all intents, constructions, and purposes whatsoever.

It will be well to consider if this provision leaves any of the

Act of Edward III effective. It referred to "children inheritors", and provided that they were to enjoy the same benefits and advantages, to have the inheritance, as children inheritors born within the ligeance. This may be paraphrased, as was done in the preamble of 16 George III, c. 52,* as follows: "children born abroad are inheritable to the estates of their ancestors in the same way as those born within the realm". So far as inheritance is concerned, birth without the dominions was not in future to make any difference, so long as the mothers had passed the sea by the license and wills of their husbands. The statute of Edward III removed the chief hardship which being born abroad, though of English parents, created. It did not declare however that they should no more be considered aliens, but limited itself to resolving the doubts which had been raised whether "sons abroad without the realm could inherit". The "children inheritors" were not declared to be British subjects, nor can this be inferred from it, unless we adopt the circular argument that as British subjects only could inherit, a law which declared certain people, not in fact British subjects, capable of inheriting, must at the same time be held to have made them British subjects.

Statute of Edw. III. no longer effective:

having only resolved doubts as to inheritance.

*[*rep.* by the Act of 1870.]

But by the statute of Anne the operativeness of the earlier statute has ceased: for it laid down positively and in unmistakeable language the limitation of the old common law doctrine, by incorporating with the *jus soli* part of the *jus sanguinis*. Children of natural-born subjects, that is, children of persons born within the realm, are henceforth to be natural-born subjects "to all intents, constructions, and purposes whatsoever", including, of course, inheritance.

Statute of Anne declaratory of nationality.

After the statute of Anne comes 4 George II, c. 21. Its title declares that it is "*an Act to explain a clause in an Act 7 Anne (for naturalizing foreign protestants) which relates to the children of the natural-born subjects of the Crown of England or of Great Britain.*"

Statute of George II, explains s. 3 of the statute of Anne.

The preamble recites that doubts had arisen upon the construction of the clause and that it was passed "to prevent any disputes touching the true intent and meaning thereof".

4 George II, c. 21, s. 1.

All children born out of the ligeance of the Crown of England or of Great Britain, or which shall hereafter be born out of such ligeance,

whose fathers were or shall be natural born subjects of the Crown of England or of Great Britain, at the time of the birth of such children respectively, shall and may, by virtue of the said 7 Anne c. 5, s. 3, and of this present Act, be adjudged and taken to be, and all such children are hereby declared to be natural born subjects of the Crown of Great Britain to all intents, constructions, and purposes whatsoever.

The two enactments mean the same thing, but the second is more precise: "children of all natural-born subjects" has become "children whose fathers are natural-born subjects at the time of the birth of the children." And the words "born out of the ligeance" are placed immediately after the word "children" to which they relate.

Fathers to be "natural-born subjects."

In this statute the term "natural-born subjects" has the definite meaning which the words imply — people born within the kingdom. There were no other subjects at the time but those who were subjects by the *jus soli*. Their children born abroad are now declared to be natural-born subjects: this term therefore has received its first extension.

Forty-two years later, by the Act 13 George III, c. 21, a second incorporation of the *jus sanguinis* was effected. The provisions of 4 George II, c. 21, "which relate to the natural-born subjects of the Crown of England or of Great Britain" are extended to the children of such children.

13 George III, c. 21.

Whereas divers natural born subjects of Great Britain who profess and exercise the protestant religion, through various lawful causes, especially for the better carrying on of commerce, have been, and are, obliged to reside in several trading cities and other foreign places, where they have contracted marriages and brought up families: and whereas it is equally just and expedient that the Kingdom should not be deprived of such subjects, nor lose the benefit of the wealth that they have acquired: and therefore that not only the children of such natural born subjects, but their children also, should continue under the allegiance of His Majesty, and be entitled to come into this Kingdom, and to bring hither and realize or otherwise employ their capital: but no provision hath hitherto been made than to extend farther than to the children born out of the ligeance of His Majesty, whose fathers were natural born subjects of the Crown of England or of Great Britain:

Be it enacted—

Children of persons made subjects by 4 Geo. II, c. 21, to be themselves subjects.

That all persons born, or who shall hereafter be born, out of the ligeance of the Crown of England or of Great Britain, whose fathers were or shall be, by virtue of the Act 4 George II c., 21, ... intitled to all the rights and privileges of natural born subjects of the Crown of England, or of Great Britain, shall and may be adjudged and taken to be, and are hereby declared and enacted to be, natural born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever, as if he and they had been and were born in this Kingdom,

anything in 12 & 13 William III, c. 2† to the contrary in any wise notwithstanding. **Chapter IV**

Difficulty in framing a definition.

The new class of persons who are made natural-born subjects by statute are the children born abroad of those who had themselves been made natural-born subjects by statute: this term has thus received its second and last extension.

In the common law and in these two statutes lies the law of England on the subject of nationality, and from these sources it should be possible to frame a definition of "British subject".

It is extraordinary that the framing of such a definition which should carry its meaning to the mind at once should be attended with any difficulty.

A definition based on s. 4 of Act of 1870 inaccurate.

Section 4 of the Act of 1870 appears at first sight to contain a definition, although it only deals with "how a British-born subject may cease to be such". The first part indeed contains a statement of the common law, for it runs "any person who by reason of his having been born within the dominions of His Majesty is a natural-born subject—". But the second part, though it evidently deals with statutory subjects, contains no such express statement, but merely refers to "any person who is born out of His Majesty's dominions of a father being a British subject". As a definition this is either incomplete, by omitting the persons made subjects by the Act of George III: or it goes too far, for children born out of the dominions of a person who is a subject by the Act of George III are not subjects, yet they are "born of a father being a British subject".

The difficulty arises from not fully realising what the class of persons is to whom the statute of George III applies. There is an almost inevitable tendency to describe this class as the grandchildren, born without the ligeance, of natural-born subjects.

Mr de Hart* gives this definition:

Mr de Hart's definition.

"The children and the grandchildren on the son's side of every man who by the common law is a natural-born subject are themselves natural-born subjects, wherever they may have been born".

"On the son's side",— the two Acts refer only to the nationality of the father, although under 4 George II, c. 21, the daughters born abroad of a natural-born father would be natural-born subjects.

† The Act of Settlement.

* In a paper published in the Journal of the Society of Comparative Legislation for 1900, p. 11.

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" By the common law is a natural-born subject ",— that is to say, the definition is not to apply to the children or grandchildren of persons who are natural-born subjects by statute.

But this is unsatisfactory as a definition, because the reference to the grandchildren omits the national status of the person who may be called for convenience the " intermediate parent ". A person may be a grandchild born abroad " of a man who by the common law is a natural-born subject ", and be a British subject because his father was born in the dominions : a definition which admits the possibility of two derivitive titles for the same person is, I venture to think, unscientific.

In the report of an Inter-departmental Committee on the Naturalization Laws, published in 1901, the standpoint of the parent is taken and not that of the child, and a twofold definition is given.

Definition of Inter-Departmental Committee.

" A person whose father or paternal grandfather was born within Her Majesty's dominions is deemed a natural-born British subject, although he himself was born abroad.....The effect of the statutes, of which the above rule is the result, is that either the father or the paternal grandfather must have been actually born within Her Majesty's dominions."*

The different standpoint makes the definition easier of statement, and the definition is certainly accurate. But the alternative " either, or " does not make it strictly scientific, for although the phrase " or the paternal grandfather " deals with the case where the " intermediate parent " was not born within the dominions, which is the case dealt with by the Act of George III, yet it does not exclude the possibility of a person deriving his British nationality from two sources, his grandfather's as well as his father's nationality. " Born within the dominions " is of course the equivalent of " natural-born subject by common law" of the previous definition, which is got rid of as unnecessary, and "paternal grandfather " is introduced for the same reason as " grandfather on the son's side ".

It is suggested that a clearer statement of who are a British subjects may be obtained by not attempting to merge the differ-

Official definition.

* This closely resembles what may be called the official definition : The Instructions to applicants for certificates of re-admission to British nationality give the following among the statements which the memorial must contain — " (3) That the applicant was a natural-born British subject by reason of having been born in British territory, or by reason of his or her father or grandfather, by the father's side, having been a British subject." The last sentence is however altered.

ent classes into one, but by keeping them distinct ; the reference to the grand-parent should be omitted, in order to preserve the idea of the derivative nationality involved in the phrase in the statute of George III –that "not only the children of such natural-born subjects, *but their children also*, should continue under the allegiance of His Majesty."

Suggested taht definition should be categorical.

Natural-born British subjects are—

(*a*) Children born within the dominions :

(*b*) Children born abroad of a father who falls within category (*a*) :– (7 Anne, c. 5, and 4 George II, c. 21)

(*c*) Children born abroad of a father who falls within category (*b*).—(13 George III, c. 21).

According to the statutes, the persons included in these three classes are " natural-born British subjects ". In its normal signification this term naturally relates to persons actually born within the realm –" British-born " as they are sometimes called : but when it is used, as it often is, in subsequent legislation, it includes these three categories of persons.

Normal meaning of " natural-born subjects " and statutory meaning.

The two terms " British subject " and " natural-born British subject " at one time had a definite meaning. the first including all subjects whatsoever, the second being limited to the persons indicated in the last paragraph. This was pointed out by Abbott C. J. in *Thomas* v. *Acklam*—

[2 B. & C. 779 ; Rul. Ca. II, p. 632.]

" We think the sense of these words is very plain : natural-born subjects are mentioned [in 4 Geo. II, c. 21] as distinguished from subjects by donation, or any other mode. A child born out of the allegiance of the Crown of England is not entitled to be deemed a natural-born subject, unless the father be, at the time of the birth of the child, not a subject only, but a subject by birth. The two characters of subject and subject by birth must unite in the father ".

The two terms of course still retain their several meanings, and in spite of what appears at first sight to be a somewhat indiscriminate use of them in the Naturalization Act, it will be found that the distinction is in reality preserved. There may be still some rare occasions when it will be necessary to bear the distinction in mind, but so far as any enactment which deals with the rights and obligations of natural-born subjects is concerned, the distinction no longer holds good, unless specially mentioned; as in the case of owning British ships, for the Act of 1870 granted to persons naturalized the rights and obliga-

Use of both terms in Act of 1870.

tions of natural-born subjects—limited, it may be, to the United Kingdom, as we shall presently see. In some old statutes the two classes are referred to specially ; but the reference to naturalized subjects is now unnecessary.* For all practical purposes the term "British subject" may be used, and is so used, as including both classes of persons. Perhaps "natural-born British subject" would be more strictly accurate, so as to make a special reference, as in some old statutes, to denizens necessary : for, though made a subject, it by no means follows that a denizen comes within the term "British subject" wherever it may be used—in the Naturalization Act for example.

The dictum of Abbott C. J. given above, has no application in the present day. The question whether the children of naturalized subjects, and also the children of such children, born abroad come within the scope of the statutes now depends on quite a different question ; it is only uncertain on account of the uncertainty which attaches to the words "in the United Kingdom" as used in s. 7 of the Act of 1870. This, however, more properly belongs to a later chapter.

Son of a British subject not necessarily a British subject.

In order to complete this survey of the subject it is important to explain, though the fact is now obvious, why it is inaccurate to say either that the son of a British subject is himself a British subject, or that the son of a natural-born British subject is himself a natural-born British subject. Nationality is by English law personal to the child, and he is only a British subject or natural-born British subject, if, by his birth, he falls within one of the above categories. The children of persons in category (*c*) are not British subjects, but aliens.

So as to grandchildren.

A fortiori, it is inaccurate to say that the grandchildren of British subjects are themselves British subjects.

Father to be subject at time of child's birth abroad.

The condition of the statute of George II, is that the father must be a natural-born subject at the time of the birth of the child abroad, in order that the child may be a natural-born subject. It follows, therefore, that if at the time of the child's birth abroad, the father had by English law lost his status of natural-

* An example of this in colonial legislation occurs in the New South Wales Constitution Act of 1854, printed as the schedule to the confirming Act of the British Parliament, 18 & 19 Vict. c. 54. The qualifications of electors are given in s. 11, which begins—"The qualifications for electors of the Legislative Assembly shall be as follows—Every man of the age of 21 years, being a natural-born or naturalized subject of Her Majesty, or legally made a denizen of New South Wales..."

born British subject, either by naturalization, or declaration of alienage, the child would not be a natural-born British subject. This is important in connection with aliens who have become naturalized, and who come under the influence of the modification given to the effect of the certificate by s. 6 of the Act of 1870. The result would be that if by the law of the father's former State he had not ceased to be a subject, then a child born while he was in that State would not be a British subject. Chapter IV

Nationality of children of fathers who become aliens.

The nationality of children of fathers, British subjects, who become aliens is provided for in s. 10 (3) of the Naturalization Act: certain conditions have *by them* to be fulfilled before they cease to be British subjects. This applies to children who are British by statute, so long of course as they remain British. But the condition that the father must be a British subject at the time of the child's birth evidently restricts the effect of s. 10 (3) to children already born at the time the father becomes an alien.

Examination of same question under 13 Geo. III. c. 21.

The provision as to the nationality of the father at the time of the birth of the child is not repeated in the statute of George III: and the question arises whether its omission is of importance.

Suppose the following case: A is a natural-born British subject under category *(b)*: his son B is also born out of dominions: he is a natural-born British subject under category *(c)*: A becomes naturalized in France: B will not become an alien unless the conditions of s. 10 (3) are fulfilled by B. Then a second son C. is born in France: is C a natural-born British subject? We have here the simple case of a child born abroad of an alien father, and the British law does not claim him as a subject; which shows that this interpretation of s. 10 (3) is the right one, apart from any provision in the statute of George II, and therefore that the omission of the words in the statute of George III is of no importance.

[L. R. 22 Ch. D. 243.]

The subject of nationality by statute was very fully gone into by Kay J. in *De Geer* v. *Stone*, and although the point actually decided has already been discussed, it will not be out of place to follow the judgment of the learned Judge, as the case is a good practical illustration of the working of the statutes.

Facts in *De Geer* v. *Stone*.

Æneas Mackay the great-grandfather of the testator was a natural-born subject of Great Britain. While abroad he married a Dutch lady, and had a son born in Holland — Daniel Mackay *(A)* the grandfather. He also married a Dutch lady, and had a

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son born in Holland—Daniel Mackay *(B)* the father. He also married a Dutch lady, and had a son born in Holland, and the question arose in connection with this son's will whether he was an alien, and whether, after his death in 1840, his real estate belonged to the Crown.

Finding.

Kay J. found that Daniel *(A)* being the son of Æneas, a natural-born subject, though by a mother who was a Dutch lady—a point to be presently considered—was capable of inheriting, and must be held to be, by force of the statute 7 Anne c. 5, a natural-born subject. Also that Daniel *(B)* being the son of a father, Daniel *(A)*, who was made a subject by the statute of Anne, was also a natural-born subject under the statute of George III.

Argument that posterity of British subjects are British subjects disposed of.

Beyond this the law does not go, and the son of Daniel *(B)*, born abroad, as his father had been before him, was inevitably an alien. The law is clear, yet, as late as 1882, it seems to have been necessary for the Court to deal with the argument "that the posterity of a natural-born British subject, though born abroad, are by the common law to be treated as British subjects for ever". Kay J., following Sir A. Cockburn, answered it briefly : if that were the common law, the legislation would have been unnecessary, " and as a declaration of the law would have been insufficient and inaccurate."

The learned Judge continued—

> " I must take the law to be that the grandchild born abroad, whose father was also born abroad, being respectively grandchild and child of a man who was by the common law a natural-born Brirish subject, would be himself a natural-born British subject, but that his children, if born abroad, would be aliens, By this law Daniel (*B*) the grandson of Æneas, would be a natural-born British subject, but the testator, who was the son of Daniel (*B*) would be an alien."

'Alien' signifies 'not British'.

"Alien" is a convenient term : and in its negative sense, as signifying " not English", it is accurately used in this connection. But in its positive sense, as signifying " the subject of another State", it is not accurate ; for it does not follow because the English law will not make a person in the position of the son of Daniel (*B*) subject to the King, that therefore the law of some other State will claim his allegiance. The conflict between the *jus soli* and the *jus sanguinis* produces not only " double nationality ", but also " no nationality ".

(1)—*MARRIED WOMEN.*

By the common law marriage had no effect on the nationality of a woman, either to make a foreign woman English, or an English woman foreign.

Marriage did not affect nationality at common law.

Baron Parke in the *Countess of Conway's case*, said—

[2 Knapp 308.]

"A French woman becomes in no way a British subject by marrying an Englishman: she continues an alien and is not entitled to dower."

And again, Lord Campbell in the *Countess de Wall's case*—

[12 Jurist 348.]

"The 7 & 8 Vict. c 66, s 16, is not a declaratory Act, and we consider it to be quite clear that at common law, not only was an alien woman married to an Englishman incapable of taking dower, but while she remained abroad she was not within the allegiance of the Crown of England."

The Act referred to is the Aliens Act, 1844, the section being as follows—

7 & 8 Vict. c. 66, s. 16.

Any woman married, or who shall be married to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject.

This is now repealed and replaced by sec. 10 (1) of the Act of 1870, which lays down the broad principle that the nationality of married women follows that of their husbands.

33 & 34 Vict. c. 14, s. 10 (1)

A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject.

In spite of this clear provision, the old doctrine was revived by Hall V.-C. in *Bacon* v. *Turner*, where he held that an English woman married to a German and residing abroad with him "could not be considered as a foreigner": a decision which is, with respect, directly contrary to the sub-section of the Naturalization Act just cited.

[34 L. T. 647.]

It will be noticed that the form of the provisions of the Aliens Act and the Naturalization Act differ essentially: the first, presumably, deals only with foreign women married to British subjects: the later legislation leaves the question of naturalization with which it is dealing, in order to lay down what appears to be, now, the law of England as to nationality of married women. It is therefore important to determine its exact extent.

Difference between the enactments of 1844 and 1870.

There is first the case of a foreign woman marrying a British husband: and secondly, the converse case of a British woman marrying a foreigner. Both these cases fall within the rule of the law, by which we claim a subject in the first case and disclaim

Extent of application of s. 10 (1) of Naturalization Act.

a subject in the second. The rule apparently disregards the law of the State to which either the woman or the man respectively belong, and which may hold the opposite. Whether in spite of its breadth of statement it can have been intended to apply to cases where neither man nor woman is a British subject, may well be doubted. Suppose, for example, such a case as the following :—A man of State X, marries a woman of State Y, and by the laws of X and of Y the woman retained, as she would have done in England under the common law, her old nationality. If the question were in any way to arise in the English Courts, it is suggested that the foreign law would prevail : though in case of conflict between the laws of X and Y, it is not easy even to suggest the solution of the difficulty.

Question whether under 25 Edw. III it was necessary for the mother to be British.

Such is the law as to the nationality of married women in the present day. The old question whether, under the statute of 25 Edward III, it was necessary in order that the child born abroad should obtain the benefit of the statute, that the mother should also have been British, has therefore ceased to have any practical interest : for, though it was discussed in 1882 in *De Geer* v. *Stone,* it becomes less and less likely, as the years go on, to be referred to in practice. But the question holds a definite place in the history of the law, and as it is intimately connected with the construction of the statute of Edward III, it cannot be omitted. It will be convenient to follow the chain of cases cited by Kay J. in his judgment in that case.

[L.R. 22 Ch. D. at p. 251]

The common law doctrines as to birth abroad and as to married women being what they were, and the statute of Edward III referring expressly to children born out of the ligeance " whose fathers and mothers at the time of their birth " were at the faith and ligeance of the King, it is not surprising to find Lord Kenyon C. J. saying in *Durouri* v. *Jones*—

[4 T. R. 300]

" If we were now called upon for the first time to put a construction on the words of the statute, I should not think that they ought to be extended further than the natural import of the words, but that, in order to be entitled to the privileges and benefit of that Act, the children must be born of natural-born parents, both father and mother, within the faith and ligeance of the King ".

[Rul. Ca. II.]

Lord Coke in *Calvin's case,* has applied this doctrine, but as part of the common law, even with regard to ambassador's children—

" If any of the King's ambassadors in foreign nations have children there of their wives being Englishwomen, by the common laws of England they are natural-born subjects ".

Mother need not be British.

The interpretation given to the Act was however that it was sufficient for the father to be an Englishman, although he had married an alien wife. In *Bacon* v. *Bacon*, the daughter of a merchant who resided abroad for merchandizing was held entitled to inherit land in England, and it was said that—

[*cit.* L. R. 22 ch. D. 251.]

" It is not material although the wife of an alien, for she is, as Berkly said, *sub potestate viri*, and *quasi* under the allegiance of our King. "

As to this case Kay J. remarks—

" It is to be observed that the wife was actually an Englishwoman, so that this was *obiter dictum*. "

It might also be said with some show of reason that the remark of Berkly would form an admirable justification for a rule of common law the opposite of that which actually obtained. Indeed the decisions under the statute of Edward III almost raise a doubt whether the common law as to the nationality of married women was as it is always stated.

In *Collingwood* v. *Pace* Lord Hale said—

[1 Vent. 413: *cit.* L. R. 22 Ch. D. 252.]

" The statute *de natis ultra mare*, 25 Edward III, declares that the issue of an Englishman upon an Englishwoman shall be a denizen, yet the construction hath been, although an English merchant marries a foreigner, and hath issue by her beyond the sea, that is a natural-born subject. "

Bacon's case and *Calvin's case* were cited by Lord Hale as authorities : and Lord Kenyon, " referring to the contest of authorities states as his view that the opinion of Lord Hale would overturn the decisions to the contrary. "

Child of alien father by British mother.

The question in the case before Lord Kenyon was the converse, whether a child born of an alien father, but whose mother was British, could inherit. Sir A. Cockburn refers to this :

[" Nationality", p. 11.]

" It was at one time thought that children born abroad of an English woman married to an alien, were entitled to the benefit of the statute of Edward III, and were to be considered a British subjects. This doctrine is now exploded, the Court of Queen's Bench having decided in the case of *Durouri* v. *Jones*, that the son of an alien father born of an English mother, out of the King's dominions, could not inherit an estate in this country in right of his mother."

[4 T. R. 308.]

Kay J. concluded his summary of these cases thus—

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"I must therefore take it to be decided that is not necessary that the wife of an Englishman, resident abroad, should be an Englishwoman, but that under that statute the issue may be capable of inheriting, although the mother was a foreigner."

Principle introduced by Act of 1844.

The history of the subject would be incomplete without a reference to s. 3 of the Act of 1844, which was based on the common law doctrine that an English woman did not lose her nationality by marriage with a foreigner. It did not declare the children to be British subjects, but, like the statute of Edward III, made them "children inheritors." Therefore in the converse case to that of the Mackays, if the mother had been an English woman married to a Dutchman, her children could after 1844 have inherited. The section is as follows :—

7 & 8 Vict. c. 66, s. 3.

Every person now born or hereafter to be born out of Her Majesty's dominions of a mother being a natural-born subject of the United Kingdom, shall be capable of taking to him, his heirs, executors or administrators, any estate real or personal, by devise or purchase, or inheritance of succession.

Application of modern rules to the facts in *De Geer v. Stone*

This provision has now disappeared, its place being taken by the broader principles of the Act of 1870. The questions raised by the case of the Mackays, would, in the present day, be solved thus : first, as to the nationality of married women, whether aliens or British subjects before marriage, by s. 10 of the Act, which gives them the nationality of their husbands : secondly, as to the inheritance, by the fact that aliens can now hold real property, so that even if there were any doubt as to the nationality of the children in any given case, it would be immaterial, as they could, whether aliens or not, take the property.

Act of 1870 declared by Act of 1872 not to affect existing rights of married women.

The principle laid down by s. 10 (1) of the Act of 1870 with regard to the nationality of married women, could not fail to have affected the rights of women who were married at the time of the passing of the Act. The doubts which arose on the subject were set at rest by s. 3 of the Naturalization Act of 1872, passed with the primary object of confirming a convention entered into with the United States on the subject of renunciation of nationality, but which was made use of to declare that existing interests of married women in real or personal property were not in any way affected by the Act of 1870. The Act of 1872 will be dealt with in a later chapter : but that part of it which deals with married women finds its place here.

35 & 36 Vict. c. 39.

* * * * * *

And whereas other doubts have arisen with respect to the effect of the Naturalization Act 1870, on the rights of women married before the passing of that Act : and it is expedient to remove such doubts :—

* * * * * *

Saving clause as to property of married women.

3.—Nothing contained in the Naturalization Act 1870, shall deprive any married women of any estate or interest in real or personal property to which she may have become entitled previously to the passing of that Act, or affect such estate or interest to her prejudice.

(II).—*WIDOWS.*

Widows are specially dealt with by the second sub-section of s. 10 of the Act of 1870, which is as follows :—

33 & 34 Vict. c. 14, s, 10 (2)

A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during her widowhood obtain a certificate of re-admission to British nationality in manner provided by this Act.

Widows retain their marriage nationality.

The sub-section deals with the case of a woman who was a natural-born subject before marriage, and who has become an alien by marriage in consequence of sub-s. (1). It proceeds on the basis, and so settles the principle, that by English law a woman retains her marriage nationality during her widowhood.

Other rights of widows under the Act.

Sub-sections (3), (4), and (5) also deal with widows, or rather with the children of widows, who change their nationality in the ways recognised by the Act. They recognise the facts, if by any chance there were any doubt on the subject, that a widow can become an alien " in pursuance of the Act " : that she can obtain a certificate of re-admission to British nationality when she has thus become an alien : and that an alien widow can obtain a certificate of naturalization in the United Kingdom. Further, a widow would become an alien by re-marriage with a foreigner.

Effect of s. 10 (1) on widows where it is in conflict with law of husband's State.

When a British woman marries a subject of a State which does not invest her with her husband's nationality, it appears that, by English law, she is none the less a subject of that State : when therefore she becomes a widow she can only resume her British nationality in the manner provided by sub-s. (2). Yet she has never in fact been, nor in fact is, a subject of that State by the only law capable of determining the question. As was said above, the rule laid down in s. 10 (1) appears to ignore the law of the State to which the foreigner who has married an English

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woman belongs. It is more than doubtful whether the Courts in the event of her widowhood, would have the right to sweep away this most anomalous form of no-nationality, by reading into sub-s. (1) a proviso, and holding that it has no effect where it is in conflict with the law of the State to which the husband of an English woman belongs.

Widow allowed to be re-patriated in lieu of becoming naturalized.

The sub-section provides that a woman who has lost her British nationality by marriage with a foreigner, may *resume* it: from which it might be inferred that a speedy method of resumption had been provided. But the process for re-patriation is precisely the same as that for naturalization, even as regards the period of preliminary residence during five years out of eight, in the United Kingdom. It must however be noted that the advantage conferred on the widow by this sub-section, is that she becomes once more a natural-born, instead of a naturalized, subject.

The widow a statutory alien.

It is not clear at first sight why there should have been an express declaration that the widow is to be deemed a " statutory alien " : for, as by her marriage she has become an alien in virtue of s. 10 (1), presumably therefore " in pursuance of the Act ", she would seem to fall within the definition of " statutory alien " given by s. 8. But if this were so a woman married to a foreigner would be a statutory alien before widowhood, and as such entitled to resume her British nationality during coverture : which is impossible. This question will be further considered in the chapter on " Re-patriation ".

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(III).—*DIVORCED WOMEN.*

Divorced women not dealt with by the Act.

The Act does not deal with the effect of divorce on the nationality of the woman, and it has therefore to be examined by the light of general principles.

Nationality of marriage continues after divorce.

As the cessation of the marriage by the death of the husband leaves the nationality imposed on the woman untouched, and this whether she become an alien or a British subject by her marriage, it follows that the same principle must apply when the marriage is dissolved by decree of divorce. In the case of a woman who was before marriage a British subject, it is not possible that she should by divorce, irrespective of the question by whose fault it has been brought about, have a larger privilege of resumption of British nationality than a widow. And moreover to hold the contrary would be to create a principle which the statute, professedly dealing with the whole subject, does not

warrant. And for the same reason, seeing that the statute has provided one way only by which British nationality can be lost, it is not possible to hold that a foreign woman married to a British subject would, as a consequence of divorce, lose her acquired British nationality.

Doubtful whether a divorced woman can resume British nationality.

But there is a difficulty in deciding the question whether a British woman married to a foreigner and divorced, has any right at all of *resumption* of British nationality under the Act. The question is the same as before : does she come within the definition of "statutory alien" given in s. 8, or has she "become an alien in pursuance of this Act" ? But as has been pointed out in the previous section, if s. 8 applied to women who lose their British nationality by marriage, they would be able to resume that nationality during coverture, which they cannot do. It would therefore seem to follow that, as widows derive their status of "statutory alien", with its privilege of resumption of British nationality, solely in virtue of s. 10 (2), and as that section does not refer to divorced women, they have not that privilege, but can only regain it by becoming naturalized, by marrying a British subject,†

Probably must be naturalised.

If there has been judicial separation—*a mensâ et thoro*—the nationality of the marriage must continue. If there has been a decree of nullity of marriage the former nationality must, from the nature of the decree, revive ; it probably would be held never to have been lost. These principles would apply both to British women who marry foreigners, and foreign women who marry British subjects.

Judicial separation ; and decrees of nullity.

(IV).—*CHILDREN.*

The rules of nationality are usually expressed in terms relating to the birth of children, whether for the purposes of the *jus soli* or the *jus sanguinis*, and are by English law personal to the child. The nationality of a child according to the former is the country of its birth : according to the latter is the country of his father's nationality.

Nationality personal to the child.

† The following are the opinions expressed by the authorities on the subject of the nationality of divorced women-- The nationality of the marriage continues after divorce. (Report of the Inter-departmental Committee).

A woman who has become British by marriage probably remains British after divorce : but the correctness of this must remain doubtful till decided by the Courts. (Dicey " Domicil " : p. 742.)

A British woman married to a foreigner remains an alien after divorce, but is a statutory alien, and therefore entitled to resume her British nationality. (De Hart, paper *cit* : p. 51.)

Chapter IV

On this three questions arise : what is the nationality of (*a*) posthumous children : (*b*) of illegitimate children, and (*c*) of legitimated children ?

(A).—*POSTHUMOUS CHILDREN.*

Posthumous children born in the Kingdom.

There is no difficulty in applying the common law rule as to birth within the kingdom to posthumous children, for British nationality is the birthright of the child. Nor, in view of the fact that a posthumous child is "considered *in esse* for its benefit, but not for its prejudice", should there be any difficulty under the statutes, except for the words of 4 George II c. 21, which require the father to be a natural born-British subject " at the time of the birth of the child." The question whether the fiction of the law that a child *en ventre sa mère* is considered as already born, would be strong enough to modify the express words of the statute, is one which must wait for judicial decision, or a more clear enunciation of the law in the statute book.

Difficulty when born abroad under 4 Geo. II, c. 21.

(B).—*ILLEGITIMATE CHILDREN.*

Illegitimate children born in the Kingdom.

Here again birth within the realm will give the illegitimate child a British nationality. But, being *nullius filius,* directly the father's existence enters into the definition of the child's nationality an illegitimate child cannot take advantage of it. As the statutes of George II and George III confer British nationality on children born abroad solely by reason of the British nationality of their fathers, it follows that these statutes cannot apply to illegitimate children born abroad of British parents. It is probable that the same construction would be put on the words "the children of all natural-born subjects" of the statute of Anne, assuming it to have an independent existence to the statute of George II.

Nationality dependent on father does not apply to them.

(C).—*LEGITIMATED CHILDREN.*

Conflict between law of domicil and law of nationality.

Legitimacy and illegitimacy follow the law of the domicil, and a question may arise whether this can in any way affect the child's nationality. Suppose for example, a natural-born British subject, domiciled in France, who by his marriage legitimates the children already born from the woman : Are not the children within the statute of George II ? The answer seems to be, first, that nationality and legitimacy are two separate subjects : secondly, that the law is that the British nationality of children depends, not on their being born in lawful wedlock, but on cer-

legitimation of children does not affect their nationality.

tain conditions which are prescribed by the statutes being fulfilled. Therefore, as at the time of his birth—the child having been born out of wedlock—the condition of the statutes is not satisfied, the law as to legitimation by subsequent marriage cannot *ex post facto* bring him within the statutes ; but it may make him legitimate, and entitle him to be so recognised in other countries.

When the nationality of children changes with that of their parents.

The change in the nationality of children by naturalization, depends on the question whether minors are able by law to perform the acts necessary to the process, a question to be considered in due course. But the Act of 1870 deals with the nationality of children under certain circumstances in another way, imposing on them the nationality of their father, or of their mother when a widow, after that nationality has undergone a change. The different sub-sections of s. 10 deal specially with the nationality of infant children under the following circumstances : a father, or a mother being a widow, *(d)*, becoming an alien "in pursuance of the Act " : or *(e)*, obtaining a certificate of re-admission to British nationality : or *(f)*, who has become naturalized in the United Kingdom.

(D).—*CHILDREN OF A FATHER, OR OF A WIDOW, WHO BECOMES AN ALIEN.*

32 & 33 Vict. c. 14. s. 10 (3).

Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the State of which the father or mother has become a subject, and not a British subject.

Naturalization of the father does not necessarily mean naturalization of the children.

This sub-section establishes the general principle that the naturalization of the father in a foreign State does not necessarily carry with it the naturalization of the children. The provision itself, however, seems to be rather in the nature of a compromise : for the logical consequence of a rule which makes nationality dependent on birth, and personal to the child, would appear to be that the change of a child's nationality should be dependent on some act of the child, assuming him able to perform it, rather than on some act of his father from whom he does not derive his national status. On the other hand, it would appear unnatural for the head of a family not to be able to change the nationality of his family, as well as that of himself and his wife ; and yet again, it

would perhaps appear still more unnatural that, by the re-marriage of a widow, the infant children of her former marriage should lose their British nationality.

The provision a compromise.

The result of the compromise is that conditions have been imposed before the children are loosed from their allegiance, which conditions are dependent on, and in part have to be performed by, the children themselves. The Act moreover seems jealously to guard the rights of the children; for it recognises the fact that it is more than probable that they will reside with their parents abroad, and therefore provides that even this shall not be sufficient : the child must himself have become naturalized in his father's new country "according to the laws of such country".

Scope of the words includes involuntary naturalization of the child.

These words include not only the case of the child becoming naturalized in that State, assuming the law of that State to allow minors to become naturalized, but also the case of the child becoming a subject of that State by operation of law : as in a country where the naturalization of the parent carries with it the naturalization of the child, without express formality performed by the child, perhaps even without residence ; or in a country which claims him solely by reason of his residence.

The meaning of the section is obscure ; for by s. 6 the naturalization of a British subject in a foreign State is only recognised if it be voluntary, and in the majority of cases the child's naturalization would be involuntary. This point will be considered in connection with the general question of ex-patriation. The subsection also imposes the condition of residence in the country, though it does not require residence with the parent, as in subsequent sub-sections. Nor does it define the time during which such residence must continue : this a matter which the law of the naturalizing State will deal with. The condition of residence is in fact introduced in the same way as it is introduced into s. 6. It must however be "during infancy"; for the naturalization of persons of full age is specially provided for, s. 10 only dealing with imposed nationality on infants. A difficult question of course arises where the full age differs in the two countries, but this must be reserved till we discuss the complicated subject of disabilities.

Residence during infancy.

This question of residence has a twofold importance. So far as the State is concerned into which the parent has become

naturalized, it is for the law of that State to determine whether it requires it on the part of the child. But, so far as Great Britain is concerned, it will not relinquish the child's allegiance so long as he remains resident in the United Kingdom. There is a very practical side to this provision of the law, and one which parents intending to become naturalized into a foreign State are bound to consider. It may well be that although a father finds it necessary to become naturalized, yet that he should not desire his children to lose their nationality : and it would seem that by allowing the children to continue their education in England he would be able to accomplish this desire ; though, on the other hand, if he wished his children to assume his new nationality, this wish would be defeated by their continuing at school in England. This may become of special importance where the father's naturalization is not intended to be permanent. It also is a very practical solution of the difficulty which may arise in connexion with the re-marriage of widows.

Importance of question of residence.

Education of the children.

(E.)—*CHILDREN OF A FATHER, OR OF A WIDOW, RE-ADMITTED TO BRITISH NATIONALITY.*

32 & 35 Vict. c. 14, s. 10 (4).

Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents.

Having dealt with the effect of the parent's expatriation on the children, the next sub-section deals with the effect of the parent's re-patriation. The words " who have become aliens in pursuance of the Act " do not appear in sub-s. 4 : the difficulty as to whether English women who marry foreigners and so become aliens, become aliens " in pursuance of the Act ", does not therefore arise, and the provision is so drafted as to link on with sub-s. 2 as well as with sub-s. 3—thus : the persons mentioned in (3) are entitled to get a certificate of re-admission to British nationality in virtue of s. 8, and those mentioned in (2) in virtue of the sub-section itself. This having been the sequence of thought, it was almost inevitable that the draftsman should have used the word "resume" with reference to the children : perhaps overlooking the fact that in the case of the children after the expatriation, there would be no " position of a British subject " to resume : perhaps

The sequence of the sub-section explained.

Difficulty as to 'resume'.

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safe-guarding himself deliberately, as Mr. Dicey suggests, with the words " shall be *deemed* to have resumed ".* Be that as it may, these words are sufficient to remove any difficulty of construction.

Meaning of "deemed to have resumed".

There is more serious hiatus in the sub-section. In the case of parents the certificate of re-admission is in abeyance when they are within the State from which they are re-patriating themselves, if that State refuses to let them go. The resumption in the case of the children appears to be without this qualification.

Condition of residence with parents.

The re-admission of the children to British nationality is made subject to the condition that they have been resident with the father or widowed mother during infancy. This condition differs from the one imposed under the previous sub-section, because the residence in this case cannot apparently be independent of the parent. The law specifies no length of time for residence, only " during infancy ", and a question might arise whether this means during the whole of the previous life of the child. Probably it would be so in the case of young children, whose age would not have allowed them to fulfil the condition of five out of the previous eight years which is required of the parent : but where their age permitted it, it might conceivably be held to mean that the residence should be during the whole of the parent's " probationary period ". Whatever may be the construction put upon the condition, it cannot be without its importance in the educational question : and in the hypothetical cases put under the last sub-section, if the children had remained at school in England the question would solve itself : for where the expatriation of the parents has taken place during the lifetime of the child, this sub-section finds no application unless the conditions for expatriation of the child under the previous sub-section have been fulfilled : if they have not, the child has remained British.

Condition of s. 10 (3) to have been fulfilled.

There is a still more important question raised by this sub-section. The child's residence with its parents may be " in the British dominions", and is not limited to the United Kingdom.

Apparent conflict as to residence of the parents between s. 10 (4) and s. 8.

The fact is therefore recognized that the parents have been residing in the dominions but beyond the United Kingdom : from which the deduction might not unreasonably be drawn that resi-

*The legal value of the word " deemed " figures again in a most important question hereafter to be discussed, as to certain acts done beyond the jurisdiction which are deemed to have been done within the jurisdiction. Mr. Dicey's suggestion is I think the right one, and coincides with what I have suggested in the question of jurisdiction.

dence in the dominions is sufficient for the re-patriation of the parents. This appears to be in direct conflict with the condition attached by s. 8 to re-patriation, identical with that required for naturalization, which is, that the residence must have been in the United Kingdom. Underlying this apparent difficulty is that fundamental distinction which is said to exist between nationality by birth and nationality by naturalization—that the former prevails throughout the dominions, but that the latter is limited to the United Kingdom. The effect of the sub-section cannot therefore be fully understood until this thorny question has been unravelled. Moreover the question is intimately connected with the subject of colonial nationality, and the powers of re-patriation conferred on Colonial Governors by the last paragraph of s. 8, a subject which cannot as yet be considered. The discussion of this part of the sub-section must therefore be postponed for the present.

Residence of child in the Dominions.

[*see* Chapters XIV and XV.]

(F).—*CHILDREN OF A FATHER, OR OF A WIDOW, WHO BECOMES A NATURALIZED BRITISH SUBJECT.*

32 & 33 Vict. c. 14, s. 10 (5).

Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom,* or with such father while in the service of the Crown out of the United Kingdom*, shall be deemed to be a naturalized British subject.

Act of 1870.

The words printed within asterisks were added to the sub-section by s. 1 (1) of the Naturalization Act, 1893, which is as follows—

58 & 59 Vict. c. 43, s. 1 (1)

The residence of a child of a naturalized British subject with his father while in the service of the Crown out of the United Kingdom, shall have, and be deemed always to have had, the same effect, for the purpose of sub-section (5) of section 10 of the Naturalization Act, 1870, as residence with such father in the United Kingdom.

Act of 1893.

The second sub-section introduced the words into s. 10(5) of the principal Act as printed above, allowing them to be inserted in every copy of that Act thereafter printed.

The fifth sub-section of s. 10 lays down the conditions under which the infant children of foreigners, who become naturalized in the United Kingdom, may adopt the new nationality of their parents. Since the naturalization of the parent was not granted without a period of residence, it was natural that a similar condition should be attached to the admission of the children to

Condition of residence with parents.

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British nationality, and therefore we find the condition that there must be residence with the parent during infancy. The remarks made as to the meaning of the condition in sub-s. (4) will apply also to this sub-eection.

Case of no-nationality under the sub-section.

The sub-section may lead to cases of no-nationality. It is quite conceivable that the law of the State to which the foreigner belongs, should provide that the expatriation of the father involves the expatriation of the minor children. They would then cease to be subjects of that State, and if by chance they had not fulfilled the condition of s. 10(5), they would not become British subjects.

Amendment introduced by Act of 1893.

The amendment of the law introduced by the Act of 1893 supplies a manifest hiatus in the old law: for, seeing that the alternative condition for naturalization is serving the Crown abroad, it was only logical that the children of such persons should also be recognised as naturalized subjects, on fulfilling the same condition of residence with the parent during infancy. Otherwise they could not become British subjects till their majority.

Act is retrospective.

The Act of 1893 is retrospective. The residence of the child with the father abroad in the service of the Crown is to be deemed always *to have had* the same effect as residence in the United Kingdom with the parent. In other words, all children in this predicament, who had during the 23 years between the passing of the Act been aliens, were thenceforward to be considered as if they had not been aliens but naturalized subjects. It is possible that curious questions might arise out of this *ex post facto* alteration of their national status.

(IV).—*EXCEPTIONS TO THE STATUTORY RULES.*

Children of parents attainted of treason at time of birth.

The statute of Edward III and that of Anne laid down in general terms the law of nationality in the case of birth abroad. The first exception is contained in s. 2 of the Act 4 George II, c. 21, and relates to children of parents attainted of treason, or in the actual service of foreign Princes in enmity with the Crown. It provides as follows—

4 George II, c. 21, s. 2.

Children of persons attainted of treason, and others excepted.

Nothing in the said recited Act 7 Anne c. 5, or in this present Act contained, did, doth, or shall extend or ought to be construed, adjudged, or taken to extend to make any children born or to be born out of the ligeance of the Crown of England or of the Crown of Great Britain, to be natural-born subjects of the Crown of England or Great Britain,

whose fathers at the time of the birth of such children respectively

were or shall be attainted of high treason by judgment, outlawry, or otherwise, either in this Kingdom or in Ireland ; or

whose fathers at the time of the birth of such children respectively by any law or laws made in this Kingdom or in Ireland were or shall be liable to the penalties of high treason or felony in case of their returning into this kingdom or into Ireland without the license of His Majesty His Heirs or Successors, or of any of His Majesty's Royal Predecessors ; or

whose fathers at the time of the birth of such children respectively, were or shall be in the actual service of any foreign Prince or State then in enmity with the Crown of England or of Great Britain, or in service of ennemy.

all such children are, were, and shall be and remain in the same state,plight,and condition to all intents,constructions, and purposes whatsoever as they would have been in if the said Act. 7 Anne c. 5, or this present Act had never been made, anything in the said Act, 7 Anne c. 5, contained to the contrary in any wise notwithstanding.

These provisoes were applied by 13 George III, c, 21, s. 2, to the persons made natural-born subjects by it, and their effect in the statute of George II was declared not to have been touched by the passing of the new statute. Exceptions continued in 13 Geo. III.

13 George III c. 21. s. 2.

Provisoes of 4 Geo. II not repealed.

Nothing in this present Act contained shall extend, or be construed,adjudged, or taken to extend, to make any persons born or to be born out of the ligeance of the Crown of England, or the Crown of Great Britain, to be natural born subjects of the Crown of Great Britain contrary to all or any of the provisoes, exceptions, limitations, and restrictions contained in the Act 4 George II, c. 21, or to repeal, abridge, or alter the same : but all such clauses* shall be and remain in the same state, plight,and condition, to all intents, constructions, and purposes whatsoever, as they would have been if this present Act had never been made.

*[*query*, persons.]

Since attainders were abolished the only exception which has any present application is the one which relates to service with enemies of the Crown. Recent events have shewn that taking up arms against the King is an offence which men with treason in their minds do still commit.

Chapter V

Of Changes in the Sovereignty.

Chapter V

Historical aspect of the subject.

The geographical aspect of nationality has been considered: we must now deal with its historical aspect, for history is full of incidents which have an important bearing on the question. Such incidents as follow in the footsteps of war—capture and cession on the one side: declaration of independence on the other—bringing about dismemberment of an empire, changing the sovereignty, and so affecting the nationality of the individual. And there are incidents which come about in more peaceful fashion—union of kingdoms affecting the territory governed: union of Crowns, affecting the person of the Sovereign: with their converse—rupture of the union, whether as regards the territory under the one Crown, or as regards the two Crowns no longer worn by one King. In such unions and ruptures there are also changes in the continuity of the sovereignty, and the nationality of the individual is affected.

Territories and islands in all parts of the globe have been added by conquest or cession to the dominions of the Crown of England: the North American plantations declared themselves to be no longer part of the British Empire. Aquitaine and Normandy have ceased to be "jewels of the English Crown": Scotland and Ireland are united with England into one Kingdom: King James VI of Scotland became by inheritance King James I of England: the King of England, by intervention of the Salic Law in the succession, can no longer wear the Crown of Hanover.

These are the familiar instances of English history: the law resulting from the changes perhaps not so quite familiar. But there is one point from which we can start as to which there can be no difficulty, for it is independent of the fact whether the change has been brought about by war or peace.

The *ante nati* and the *post nati*.

Seeing that nationality depends on birth, it is obvious that any variation in the law must depend on whether birth takes place before or after the change in the sovereignty: and thus there are two distinct classes of persons with whom we have to deal—the *ante nati* and the *post nati*.

Change in sovereignty resulting from union or disunion of territories :

The questions which concern territory, whether it be cession or merger, union or dismemberment, are not complicated, for this division of the persons affected indicates with precision the incidence of the respective national laws. They give rise however to special considerations incident to the time of the actual transfer, the performance of certain formalities, or the consequences of omitting to perform them, which are not free from difficulty.

and from union or disunion of Crowns.

The special complications of the subject arise in connection with the union of Crowns on one head by descent, and the severance of united Crowns by interposition of a prohibitory law : in connection, that is to say, with the personal aspect of the question.

The learning on the subject is contained in two cases : one —*Calvin's case*—deals with the time between the accession of King James to the English throne and the passing of the Act of Union : the other—*the Stepney Election Petition*—with the time when Queen Victoria could not assume the Crown of Hanover.

Rule in *Calvin's case*. [Rul. Ca. II, 575.]

The rule laid down in *Calvin's case* is usually stated as follows :—

> Calvin, born in Scotland when the King of Scotland was also King of England, but before the Act of Union, that is to say, at a time when there were still two separate Kingdoms, was a " natural-born subject having the capacity at common law to hold lands in England ".

Inference and consequence if this rule is sound.

The inference from this is that where two Crowns are united in one Sovereign, persons born in either kingdom after the union of Crowns and irrespective of the union of kingdoms, are natural-born as regards both countries : with the consequence that they enjoy in both countries the rights which the laws of those countries respectively confer on natural-born subjects : such rights, for example, as are conferred by the law of inheritance or the law of elections.

The scope of the rule defined.

We shall have to enquire whether this inference and this consequence are sound : or rather whether the proposition itself is sound. It cannot be professed that the principle is an easy one to grasp, or is other than elusive. The subsequent union of the countries makes it easier to understand in the case of England and Scotland : but it is by no means easy in the case of England and Hanover, to realise how a Hanoverian, not being an Englishman, nor even a denizen, may have had the rights of a natural-

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born subject in England. It is hardly necessary for the present to add the further complication that these rights possessed one day may have vanished on the next : the result of this has however an important bearing on the rule itself, and will be considered in due course.

Before we examine the details of the rule, it is important to realise that whether it be as has been stated above, or whether it is found necessary to modify it, it concerns itself exclusively with the merger of sovereignty, and does not relate in any way to the merger of nationality. Further it does not require, nor even concern itself with, a merger of laws.

Merger of kingdoms by union.

When however we leave the question of the merger of sovereignty, and come to the question of merger of kingdoms by Act of Union, the questions become less complicated, and turn on the more or less complete manner in which the merger has been carried out. If there has been no merger of laws, which, as we may judge from our own case, is not at all necessary to the arrangement, curious questions arise : although, so far as the outer nations are concerned, the divergent nationalities have disappeared, yet they are preserved for internal purposes, and so far as the law has not dealt with them specially, they are still governed by the fundamental principle of nationality. If for example there were still any rights belonging to Scotchmen, or any duties imposed on Scotchmen, as distinct from those imposed on persons in Scotland, the *jus soli*, being the fundamental law of nationality would probably determine who were Scotchmen. But it is by no means clear that the statutes, which are based on the *jus sanguinis*, would in like manner determine the part of the kingdom to which any given person belonged. So far as the United Kingdom is concerned this question has not, I believe, any practical importance : but it is an integral part of the question we are now considering, and therefore must be stated here : for it has, as we shall presently see, an importance when we come to consider nationality from the point of view of the Colonial Empire.

The different nationalities may still be preserved for internal purposes.

[*see* Chapter XVI, 2nd. part.]

Lastly, the merger may be of actual territory, involving the obliteration of the ancient landmarks and of the ancient laws of the territory absorbed : then the subjects of the two countries are not only under the same Sovereign, but also under the same laws. In this case we come back to the point from which we started, and few, if any, difficulties arise.

Merger of territories by absorption.

Alsace and Lorraine are merged into the German Empire, and so also is Heligoland ; they are as much part of the territory of Germany as the Isle of Wight is part of the territory of England. But, to instance the case of non-merger of territory, the Isle of Man—that "little but yet ancient and absolute kingdom" —like Scotland and Ireland, is not within the normal application of Acts of the English Parliament, and is out of the jurisdiction of the English Courts. The same principle applies to the Channel Islands.

Extent of merger depends on express terms of constitutive Act.

The extent of union or merger depends therefore entirely on the terms of the constitutive Act. But, to repeat what has already been said, it is essential to bear in mind that the fact that internal limits of jurisdiction, whether of the Parliament or of the Courts, are still preserved, does not in any way affect the essential condition of sovereignty over the whole ; it only points to the fact that different consequences attach to the sovereignty and consequently to the status of subject, in the different parts of the Sovereign's empire.

Analysis of historical precedents in *Calvin's case.*

I now propose to refer as briefly as possible to the historical portion of the judgment in *Calvin's case,* in which was amassed a wealth of historical incident, cases in which the consequences of union and severance were facts well-known and ascertained, by authority in some cases, and beyond dispute in all. This historical aspect of the case apart from its interest, and apart from its great value as helping the understanding by illustration, forms a series of legal precedents which are likely to be sufficient guides for the decision of questions arising out of new unions and new severances in time to come. It was in fact described in the report itself, as rather "a renovation of the judgments... in so many ages past, than any innovation."

The point in issue.

The question before the Court in its concrete form was whether Calvin, born in Scotland after the union of the Crowns, could hold lands in England. If he were a Scotchman simply he was an alien and could not hold : but on the contrary he could, if, being a Scotchman, he yet had the rights of a natural-born subject in England.

The common law as to aliens holding property.

" An alien friend... may by the common law have, acquire, and get within this realm by gift trade or other lawful means, any treasure or [p. 608.*]

* The marginal references are to the pages of the report of the case in "Ruling Cases," Vol. II.

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goods personal whatsoever, as well as an Englishman, and may maintain any action for the same : but lands within this realm, or houses (but for their necessary habitation only) alien friends cannot acquire, or get, nor maintain any action, real or personal, for any land or house, unless the house be for their necessary habitation".... " It followeth next in course to set down the reasons wherefore an alien born is not capable of inheritance within England : and that he is not for three reasons — *i.* the secrets of the realm might thereby be discovered : *ii.* the revenues of the realm (the sinews of war, and ornament of peace) should be taken and enjoyed by strangers born : *iii.* It should tend to the destruction of the realm. Which three reasons do appear in the Statute of 2 Henry V cap. and 4 Henry V cap. *ultimo*."

[p. 611.] The reasons therefor.

[p. 612.] Precedents, where persons born abroad under the same Sovereign adjudged not aliens.

The case of the Prior of Chelsea is cited as a precedent. His possessions were seized in time of war, it being alleged that he was an alien born. The Prior by petition of right showed that he had been Prior of Andover, and that his possessions had once before been seized for the same reason ; he had then

" alleged that he was born in Gascoin within the ligeance of the King : which point being put in issue and found by the jury to be true, it was adjudged that he should have restitution of his possessions."

And in the case of the Earl of Arundel—

[p. 613.] Gascony.

"amongst many notable points, this one appeareth to be adjudged anp resolved, that a man born in Gascoin under the King's ligeance was no alien born, as to lands and possessions within the realm of England and yet England and Gascoin were several and distinct countries... for then such a conceit was not hatched that a King having several dominions should have several ligeances of his subjects."

As to the King's possessions in France—

[p. 614.] Guienne.

" Guienne was another part of Aquitain, and came by the same title : and those of Guienne were by Act of Parliament, in 31 Henry IV adjudged and declared to be no aliens, but able to possess and purchase &c. lands within this realm. "

[p. 615.] Normandy.

" The Kings of England had sometimes Normandy under actual ligeance and obedience. The question is then whether men born in Normandy, after one King had them both, were inheritable to lands in England, and it is evident by our books that they were : for so it appeareth by the declaratory Act of 17 Edward II *de praerog. Reg.* c. 12, that they were inheritable to, and capable of lands in England."

And so as to the

[p. 615.] Guernsey and Jersey.

" Isles of Guernsey and Jersey, part and parcels of the Dukedom of Normandy, yet remaining under the actual ligeance and obedience of the King,.. no man will doubt but those that are born in Guernsey and

Jersey (though those Isles are no parcel of the realm of England, but several dominions enjoyed by several titles, governed by several laws) are inheritable, and capable of any lands within the realm of England, "

So as to the Isle of Man, which, like Normandy and Gascoin

" were out of the power of the Chancery, and governed by several laws: and yet none will doubt that those who are born within that Isle are capable and inheritable of lands within the realm of England."

Isle of Man. [p. 617.]

And so, the judgment continues, as to

" those that were born in Wales before 12 Edward I, whilst it was only holden of England";

[p. 617.] Wales.

and in

" France and the members thereof, as Calice, Guynes, Tournay &c. which descended to King Edward III, as son and heir to Isabel daughter and heir to Philip le Beau, King of France";

[p. 618.] Parts of France.

and in Ireland while it was

" a dominion separate and divided from England... and he that was in Ireland was out of this land";

[p. 619.] Ireland.

and in Scotland,

" though it were under the King of England's ligeance and obedience, yet governed by the laws of Scotland ";

[p. 621.] Scotland.

and so back to the Heptarchy, when there were

" seven several crowned Kings of seven several and distinct kingdoms: but in the end the West Saxons got the monarchy, and all the other Kings melted (as it were) the Crowns to make one imperial diadem for the King of the West Saxons over all. Now, when the whole was under the actual and real ligeance and obedience of one King, were any that were born in any of those several and distinct kingdoms aliens one to another? Certainly they being born under the obedience of one King and Sovereign were all natural-born subjects, and capable of and inheritable unto any lands in any of the said kingdoms. "

[p. 622.] The Heptarchy.

The unions which the law works in consequence of the two kingdoms being under one Sovereign are — *i.* The union of fact of the two Kingships in the person of one King: *ii.* A union of ligeance and obedience: for the people of two kingdoms owe allegiance to one King. *iii.* Correlatively, a union of protection, for the same King owes protection to the people of two kingdoms: *iv.* The outward and visible symbol of the united kingships in the standard of the King: in the instance, " the three lions of England and that one of Scotland united and quartered in one escutcheon. "

Yet, in spite of these unions, the law also made four separations: thus—

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"*i.* England and Scotland remain several and distinct kingdoms : *ii.* They are governed by several judicial or municipal laws : *iii.* They have several and distinct Parliaments : *iv.* Each kingdom hath several nobilities."

[p. 603.]

But underlying the facts of cases which no man could doubt, and underlying all the wealth of ancient instances, there was the legal principle fundamental to allegiance— that it is not local : that

Allegiance is not local.

"ligeance of the subject was of as great an extent and latitude as the royal power and protection of the King : *et è converso.* It appeareth by the Stat. of 11 Hen. VIII, cap. 1, and 2 Edw. VI cap. 2, that the subjects of the King are bound by their ligeance to go with him in his wars as well within the realm as without... And therefore we daily see, that when either Ireland or any other of His Majesty's dominions be infested with invasion or insurrection, the King of England sendeth his subjects out of England, and his subjects out of Scotland, also into Ireland for the withstanding or suppressing of the same, to the end his rebels may feel the swords of either nation. And so may the King's subjects of Guernsy, Jersey, Isle of Man, &c, be commanded to make their swords good against either rebel or enemy, as occasion shall be offered : whereas if natural ligeance of the subjects of England should be local—that is, confined within the realm of England or Scotland, &c.—then they were not bound to go out of the continent of the realm of England or Scotland, &c."

[p. 587.]

[p. 588.]

The subjects of either nation bound to serve the King abroad.

And by all the authorities it was declared to be

"manifest that the protection and government of the King is general over all his dominions and kingdoms, as well in time of peace by justice, as in time of war by the sword, and that all be at his command and under his obedience. Now, seeing power and protection draweth ligeance, it followeth that seeing the King's power, command, and protection extendeth out of England, that ligeance cannot be local, or confined within the bounds thereof... So, seeing that ligeance is a quality of the mind, and not confined within any place, it followeth that the plea that doth confine the ligeance of the plaintiff to the kingdom of Scotland, *infra ligeantiam regis regni sui Scotiæ, et extra ligeantiam regis regni sui Angliæ*, whereby the defendants do make one local ligeance for the natural subjects of England, and another local ligeance for the natural subjects of Scotland, is utterly insufficient, and against the nature and quality of natural ligeance, as often it hath been said."

[p. 591.]

[p. 592.]

The last quotation which is necessary to the understanding of the judgment is the answer which was given to the objection that—

"if *post nati* were by law legitimated in England... what inconve-

[p. 627.]

nience and confusion should follow if (for the punishment of us all) the King's royal issue should fail, &c., whereby these kingdoms might again be divided." Chapter V

To which it was said that

" it is less than a dream of a shadow or a shadow of a dream : for it hath often been said, natural legitimation respecteth actual obedience to the Sovereign at the time of the birth : for as the *ante nati* remain aliens as to the Crown of England, because they were born when there were several kingdoms, and the uniting of the kingdoms by descent subsequent cannot make him a subject to that Crown to which he was alien at the time of his birth : so albeit the kingdoms (which Almighty God of his infinite goodness and mercy divert) should by descent be divided, and governed by several Kings : yet it was resolved that all those born under one natural obedience while the realms were united under one Sovereign, should remain natural-born subjects, and no aliens : for that naturalization due and vested by birthright, cannot by any separation of the Crowns afterward be taken away : nor he that was by judgment of law a natural subject at the time of his birth, become an alien by such a matter *ex post facto*. And in that case, upon such an accident, our *post natus* may be *ad fidem utriusque regis*, as Bracton saith in the afore-remembered place." [p. 629.]

This paragraph contains the cardinal principle of the decision, which may be rendered thus—after the joining of two Crowns on one head the *post nati* are not aliens to one another, yet the *ante nati* remain aliens born. The rule as stated in this part of the judgment.

But there are in it two contradictory statements—first, that being by law a natural subject a *post natus* cannot afterwards become an alien " by such a matter ", *i.e.* by separation of the Crowns : yet, secondly, that if such a matter did happen, he would be *ad fidem utriusque regis*. And further, the law is not fully stated, for quite apart from the contradiction, as Lord Coleridge pointed out in the later case—*Isaacson* v. *Durant*—the last statement Contradictions in the statement. Statement is incomplete. [L.R. 17 Q. B. D. 54.]

" leaves to which kingdom in case of the supposed severance the allegiance would be due, wholly uncertain. Our *post natus* may be *ad fidem utriusque regis*, : and it should seem that if there were three or four separate kingdoms there would or might be three or four separate allegiances " Nationality of persons after the severance left undetermined.

This point was examined in the case just mentioned, Lord Coleridge's judgment being the critical pendent to the earlier judgment.

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Stepney Election Petition. The point in issue.

The question in issue in the *Stepney Election Petition* was the right of certain Hanoverians to vote at the election of members of Parliament. It was clear that if the voters whose vote had been challenged

> " had been born in Hanover after the accession of the Queen of the United Kingdom, they would, supposing the Queen to have been also Queen of Hanover, have been exactly in the situation of Calvin, and the decision in his case would have given them their votes."

Or, going one step further back, voters born in Hanover during the reign of William IV would have been also in the same situation as Calvin, and could have voted at elections during that King's reign.

Cessation of joint tenure.

But the joint tenure of the two Crowns had ceased through the operation of the Salic Law: the Queen of England could not be Queen of Hanover, and the question for decision was what was the position in England *after the Queen's accession* of Hanoverians born *before the Queen's accession* (at the time when the Crowns of England and Hanover were held by the same person), who were resident here not naturalized, but in all other respects entitled to vote. In other words, what is the effect of the severance on the rights of the *post nati ?*

Other groups of claimants.

There were two other groups of persons claiming to be electors—

(i), persons not naturalized, born in Hanover, since the accession of the Queen, of parents born in Hanover before that date :

(ii), persons not naturalized, born in Prussia, since the accession of the Queen, of parents born in Hanover in the reign of George III.

But it was admitted that the claims of these two classes of persons fell to the ground if the claim of the first group were disallowed.

Dictum in *Calvin's case* supporting the claim considered.

With regard to the claim to vote after the joint tenure of the Crowns had ceased, there is no doubt that the first of the contradictory statements above alluded to does support it : for it seems to warrant the application to the *post nati* of the old doctrine " once a subject always a subject ". But it was *obiter,* and the whole question was still open to examination.

The statement was evidently based on the belief that the Crowns of the two kingdoms of Scotland and England could

never be severed, that the question of divided allegiance could never become a practical one. But when the judgment in the later case was delivered the union of the Crowns of two other kingdoms had come to an end : the question of divided or severed allegiance had become a practical one, and called for authoritative decision. Chapter V

Rule laid down in *Stepney Petition* differs essentially.

It is curious that although the Court expressed the most profound respect for *Calvin's case*, in laying down the proposition to be derived from it, it was corrected in so important a particular as to be no longer the same proposition : and this re-statement of the proposition eliminated the error into which the earlier Judges had fallen : perhaps unconsciously, for Lord Coleridge did not refer to the fundamental difference between the rule as he laid it down and that deducible from *Calvin's case*. This is Lord Coleridge's rule :

The two rules compared.

" It has long been settled that while the Crowns of two countries are held by the same person, the inhabitants of the two countries are not aliens in the two countries respectively "

The rule in *Calvin's case*, as given in the head—note in " Ruling Cases " on the authority of all previous editore of Reports of the case*, is that Calvin was "a natural-born subject, having the capacity at common law to hold lands in England".

That this is in fact the ruling there can be no manner of doubt : for the confused statement as to the effect of severance in the concluding paragraph was the inevitable corollary from the elaborate argumentation : a confusion which was emphasised with some sarcasm by Lord Coleridge himself, who disposed of the case before him by this " plain and simple argument."

The corollary from the later rule settles the question in issue.

The persons who claimed to vote were born in Hanover, " subjects of a King who was at once King of Hanover and King of Great Britain and Ireland. At the death of William VI his two Crowns, according to the different laws of succssion which obtained in these two countries, went to different successors : to his niece in these Islands, to his brother in Hanover.

It followed therefore that

Analysis of effect of the severance.

" the Hanoverian by birth who had ne eded no naturalization in the life-time of William IV, needed it when the Hanoverian heir and successor of that Monarch was no longer the Sovereign of these Islands. He

* And which, if it had not been warranted, would assuredly have been corrected by the learned editors of " Ruling Cases."

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owed allegiance to William IV and his heirs and successors according to law, and as a Hanoverian he owed it on the death of William IV to the Duke of Cumberland, who was, according to Hanoverian law, the heir and successor of his brother, and ascended the throne as King Ernest in due course of law. He became an alien because the Sovereign to whom his allegiance was due was a foreign Sovereign : and the person to whom his allegiance had been due was dead leaving an heir. The Crowns had by accident been united in one person; but when the union of the Crowns came to an end the union of allegiance ceased too : and the allegiance which had been due to the King of Hanover, who was also King of the United Kingdom, was never at any time due to the Queen of the United Kingdom, who was not and who could not by law be Queen of Hanover. "

Supported by history.

In *Calvin's case* much weight was attached to the fact that under similar circumstances in history no such claim as the one before the Court had ever been made. Lord Coleridge relied on another period of history in support of his argument.

" The case must have arisen when William III was at once King of this country and Stadtholder of Holland. Yet of any claim of Dutchmen resident in this country after the death of King William to be anything but alien here there is no trace to be found in any of the books."

Re-statement of rule as to effect of severance.

The principle warranted by *Calvin's case,* as corrected by the *Stephney Petition case* should read as follows :— After the joinder of two Crowns on one head, and so long as the union of Crowns subsists, but irrespective of the joinder of the kingdoms, persons born in either country are not aliens to one another, but persons born either before or after this union are aliens born.

Importance of term "not aliens to one another."

The substitution of " not aliens to one another " for " natural-born subjects " is important : and it would seem to be the only method of defining that middle state between fellow-subjects and aliens in which these persons find themselves. They cannot be aliens, for they have rights which no aliens ever had : and they are not fellow-subjects, for the bond between them will break when the union comes to an end, a thing impossible for those who are, in the ordinary meaning of the term, subjects of the same King.

Further comparison of the two rules.

With regard to the use of the term natural-born subjects, there can be no doubt, not only that it complicated the question, and led the argument in *Calvin's case,* so to speak, off the track, but that some of the arguments would have supported an

attempt to establish that the *ante nati* were in the same position as the *post nati* : more especially that part which relates to the subjects of both of the King's kingdoms making their swords good against a common enemy. The only term which at all expresses the status of these persons is " non-alienage "; that is, they are not aliens to one another. It is not even accurate to say, as at the commencement of the chapter it was said, that they possess the rights of natural-born subjects. It needs no demonstration to admit that they do not come within the scope of the statutes of Anne and George II : *a fortiori* of the statute of George III : that is to say, their children born abroad would not be natural-born subjects, but, the union continuing, such children would be in like predicament with their fathers. These indeed are the two classes of claimants to the franchise which were disposed of without argument in the *Stepney Petition case.*

Persons in the position of the Hanoverians do not even possess the rights of natural-born subjects.

e.g. under the statute of George II.

The rights which they possess cannot be other than those which flow from " non-alienage ". They may do what an alien cannot do : for they are not aliens. Thus they can vote : for all may vote who are not aliens, and who possess the other necessary qualifications. So, they can hold lands : for here again the statement of the right is prohibitory, rather than permissive : it is not " all subjects may hold lands ", but " no alien may hold lands ". But this is very different from saying that they have all the rights of natural-born British subjects, for this would include rights which are expressly limited in their enjoyment to British subjects, which they are not, but only subjects of a King who is also King of Great Britain.

Rights flowing from " non-alienage."

But if the rule in *Calvin's case* even thus modified is difficult to understand, the rule in the *Stepney Petition case* has difficulties peculiar to itself ; and it is not easy to work out from it, in all the details, the consequences of severance, or cessation of union of Crowns. In the case of the franchise the vote is given and done with : it is a right of a temporary nature ; a man has the right to vote under then existing circumstances in 1836 : and these circumstances having changed, he has not the right to vote in 1838. But the holding of lands depends on a right of a different nature, and it is not easy to fit on to it a terminable tenure : and in the case of devolution of lands it is still more difficult to follow. If, when the union of Crowns comes to an end, the joint subjects of the same King fall asunder and

Difficulties in applying rule in *Stepney Petition case.*

Right to vote.

Right to hold lands —or ships.

become the several subjects of several Kings, then the status of "non-alienage" comes to an end, and "alienage" supervenes. And with alienage all its consequences, one of which *was* the absence of any right to hold lands.

It is necessary for the sake of argument to treat the case as it would have been treated prior to the change in the law as to tenure of lands by aliens in 1870: the principle obviously covers any right not enjoyable by aliens in the present day, and in applying it we need only substitute British ships for British land.

Consequences when "non-alienage" is replaced by "alienage" are not clear.

What then is to be the result when alienage supervenes? Is the tenure to come to an end, and those who hold to be disseized? And what of those who hold by inheritance from ancestors who held in their own right as non-aliens?

I do not profess to give the answers to these questions. If the case should arise it may be that the Courts would devise a new doctrine:—perhaps, that those who have held the right once in virtue of their non-alienage, should not be subsequently dispossessed by their subsequent alienage. It might be that now that the Courts have expounded the law, Parliament would intervene should ever the occasion again arise to settle the question, as similar questions are settled by treaties of cession. It is permitted perhaps to say that Lord Coleridge's criticism of the old judgment— that

> "the Judges never expected the case to arise, and did not trouble themselves to think out the consequences which would follow from their doctrine if a case they thought so improbable ever did arise"—

seems to be in part applicable to the new judgment: for assuredly its consequences were not fully thought out. The manifold difficulties which arise in applying the doctrine at least suggest the reflexion whether, in spite of the learning of it, and in spite of the subsequent acceptance of it as of the highest authority, the rule in *Calvin's case* does not require further investigation.

Consequences of dismemberment the same in principle as the consequences of severance.

The consequences of dismemberment must naturally follow the same law as those of severance, for the incident of a rupture of a relationship hitherto existing between certain persons exists in both cases: in the case of dismemberment however this rupture occurs as between persons who were in fact fellow-subjects. As dismemberments are generally evidenced by some document —a treaty of cession, or a recognition of a declaration of inde-

pendence— it is more than probable that the question of subsequent tenure of lands will be specifically dealt with. Thus in the treaty between Great Britain and its former Colonies, the United States, there was a special provision to which Abbott C. J. alluded in *Doe* d. *Thomas* v. *Acklam* : - the treaty provides that

Some points usually settled by treaty or other document.

" British subjects who then held lands in the territory of the United States, and American citizens who then held lands in the dominions of His Majesty, should continue to held them, and might grant sell or devise them, as if they were natives, and that neither they nor their heirs or assigns should, as far as might respect the said lands, and the legal remedies incident thereto, be considered as aliens."

[2 B. & C. 799. Ru. Ca. 11, 632.] Case of the United States.

It does not appear that any similar provision was inserted with regard to the ownership of shares in British ships.

In the case of compulsory severance there is a further point to be considered : although there is a transfer of allegiance *en masse* of the inhabitants of the country, regard is generally paid to the wish of the individual as to leaving or adhering to the old allegiance : the general principle tending towards fulfilment of the wish of the person in question, if clear evidence of is forthcoming. The cases which arose out of the declaration of independence of the United States are illustrative of this principle.

In cases of compulsory severance the wish of the individual is looked to.

The first case is *Doe* d. *Thomas* v. *Acklam*. James Ludlow was born in a part of America which was at the time a British Colony; he was therefore a British subject. His daughter was born after the recognition of the independence of the Colonies. The question was whether at the time of her birth her father was still a natural-born subject. It was answered in the nagative because after the Colonies had become United States, and their inhabitants generally citizens of those States,— James Ludlow " by his continued residence in those States manifestly became a citizen of them ".

[2 B. & C. 799. Ru. Ca. 11, 632.] Cases arising out of independence of United States.

The effect of severance is thus stated by Abbott C. J.—

Declaration of severance imports cessation of old nationality.

" A relinquishment of the government of a territory is a relinquishment of authority over the inhabitants of that territory. A declaration that a State shall be free, sovereign, and independent, is a declaration that the people composing the State shall no longer be considered as subjects of the Sovereign by whom such a declaration is made."

In re Bruce is a similar case. A person born in Maryland in 1764, and therefore like Ludlow a British subject, remained in the States after the treaty. The Court held " that the King having relinquished his claim to the allegiance of the American

[2 Cr. & J. 436.]

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citizens, this particular American acquiesced in the relinquishment."

Deliberate continued residence after separation.

Ludlow and Bruce therefore, by continuing to reside in the States after the Declaration of Independence, were held to have deliberately accepted American citizenship. The question arises whether a deliberate acceptance of a new conditions is essential, and if so, what other evidence would support it, or would support the opposite, a deliberate refusal to accept the new conditions; in other words, whether these cases warrant the conclusion that the exercise of free-will or choice is allowed in the matter.

[5 B. & C. 771.]

In *Doe* d. *Auchmuty* v. *Mulcastle*, we have an example of a person remaining a British subject in spite of continued residence in the new States. Auchmuty resided in New York during the revolutionary war within the British lines, and, serving in the Governor's company of volunteers, bore arms against the States until the peace. He embarked with British troops when they evacuated New York, and resided in England for two years. He then returned to New York in the employment of the British Government, and at the end of his employment he settled in the United States, married a British-born subject, and had four children. The case was clearly distinguishable from the others on the ground that Auchmuty had not "put off his allegiance at at the time of the treaty which enabled him to do so."

Residence commenced after recognition of separation.

Abbott C. J., said that "it is not found that Auchmuty was at the time of the treaty in 1785 adhering to the United States."

When therefore he resided in America after the treaty, he was in the same situation as if he had gone to reside in any other foreign country, and his children were expressly within the statute 4 George II c. 21, and entitled to the privileges of natural-born subjects of the King of England (Bailey J.)

There is one other similar case reported which arose in consequence of the cessions of territory stipulated in the Treaty of Versailles : *Jephson* v. *Riera*.

[3 Knapp. P. C. 130].

The plaintiff was a native of Minorca born in 1782, the daughter of Peter Walls, also a native of the Island, which at the of his birth belonged to Great Britain. In 1783 the Island was ceded to Spain. It was contended that after the cession Walls and his family adhered to the Spanish Government and aban-

Case arising from cession of Minorca.

doned their allegiance to Great Britain. On the other hand it was proved that soon after the cession, and before the expiry of the time allowed by the treaty for the removal of their property, Walls left Minorca for England with the intention of never returning thither to make it his place of domicile, and that from that time he never did return, but settled in Gibraltar. There was an attempt, apparently unsuccessful, to prove that he did in fact return to Minorca with the intention of obtaining employment there. The Privy Council held that, even if that fact had been proved, it would not, in the presence of the previous facts, have warranted a finding that he had so returned under circumstances which would have established his intention to abandon the privileges of British subject, which he had preserved to himself by his action within the period of protection provided by the treaty.

Return to ceded country after nationality determined.

Now in each of these cases the decision clearly turns on some definite circumstance which occurred at the time of the severance: in the case of Ludlow there was "continued residence": Bruce "remained in the States": Auchmuty, in spite of continued residence, bore arms against the States: Walls exercised the privilege of leaving Minorca which the treaty gave him.

Review of the cases.

The question we have to consider is, what is to determine nationality in newly created States? Is the change of nationality to be imposed on all the old subjects *primâ facie*: or is express proof of definite intention to assume the new allegiance necessary in each case? How far is any overt act necessary to indicate this intention?

Examination of rule applicable.

What word soever be used to designate the state of mind which brings about what in fact takes place on such occasions whether it be "option" or "election", "taking advantage of the treaty", or "acquiescing in the relinquishment", it is clear that there is an active state of mind and not a passive one. Even the mere fact of remaining in the new State is the result of deliberate intention. Ludlow and Bruce remained when they might have departed. The circumstances inevitable to such a time tend to support the suggestion that some deliberate expression of desire on the part of all persons interested must be necessary to determine their subsequent allegiance.

Facts of the time necessitate a deliberate exercise of choice.

The treaty being about to be entered into the consequences of remaining or of departing are clearly put before all persons

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who will be affected by it. They may choose to remain, or they may choose to depart: they cannot but elect which they will do, and this in effect is electing to which allegiance they will thenceforward adhere. It is not a very large assumption that all men whom it concerns know of what is passing when a new nation is in the throes of being born, and to which when born they will belong, and are therefore capable of election. If the treaty does not lay down the nature of the overt act with sufficient clearness, there are many acts,— words would perhaps suffice— which would show the intention: the taking arms on the one side or the other: or the not taking arms. The point of the matter lies in this, that at such a time, when the nation as such has declared its intention of not remaining true to its old allegiance, and when the Sovereign to whom that allegiance is due has acquiesced, it is but natural that every member of the community should have the right to say whether he elects to stay or to go.

Allegiance in case of severance must depend on election.

I believe therefore that it is sounder and more consistent with practical considerations to say, that in case of severance the future nationality of all persons affected depends on their own free-will; but that in the absence of any act from which their intention to belong to the new State may be inferred, their original nationality will be held to have continued. This puts the *prima facies* on the side of the old nationality and not on that of the new; but it gives sufficient weight to the fact of residence in the new State. The question appears almost academic, yet it may become a practical one, if we contemplate the possibility of another Declaration of Independence,—" (*absit omen,* as the Judges said in *Calvin's case,* but it has been and may be again) ",— and the recognition of another United States.

In many cases a formal adherence is required.

Looking at the question from the other side it may be that the declaration of independence should require some formal adherence to bear witness to citizenship, in which case the question is simplified. And in the case of cession of territory by conquest the matter is also settled by the requirement of the oath of allegiance. Failing which, if the former aliens are allowed to continue to reside, a person could only become a British subject by naturalization.

These cases were pressed into the argument in the *Stepney Election Petition*, but it does not need many words to show that the analogy breaks down, and that they lend no countenance to the suggestion that whenever there is a severance of sovereignty the subjects of either country have a right to elect to which King they would thenceforward owe allegiance. The analogy breaks down because the starting point is entirely different. In the case of severance of kingdoms all persons start as subjects, and the question is whether the nationality they already have should be taken away from them: the right of election is not an unreasonable right to give them, seeing that they may not have been supporters of the movement which ended in separation. Whereas in the case of a union of Crowns coming to an end there is no common subjection to start with: each person has his own nationality, and nothing has occurred to change it. The cessation of the union may deprive him of certain rights which he has been enjoying in the other country: but since he never was a subject of that country the fact that the union has come to an end cannot entitle him to become what the union of Crowns itself did not confer upon him. The Hanoverians had never been Englishmen: they were the Hanoverian subjects of the King of Hanover who was also King of England: and being Hanoverians before the death of William IV, they were Hanoverians after.

The doctrine of election is not applicable to severance of Crowns.

The starting point is different.

One further word only is necessary. It seems clear that such Hanoverians could have become English subjects of William IV of England by naturalization. Naturalization is possible where there is only a union of Crowns: but it is impossible where there is a union of kingdoms. Thus after the Act of Union it would not be possible for a Scotchman to become an Englishman, assuming that any question turned on the internal aspect of nationality to which reference has already been made.

Naturalization when applicable in such cases.

Chapter VI.

Of Denizens.

Chapter VI

Subjects by prerogative creation.

By one of the most ancient prerogatives the Sovereign may make aliens subjects by letters patent of denization, such subjects being then termed denizens: or more properly "donaisons", as the Judges explained in *Calvin's case,* their nationality being acquired by grant and not by right. The denizen was *subditus datus,* the subject was *subditus natus.*

Right preserved by Act of 1870.

The law on the subject is recondite, but it is still the law, the power of the Sovereign to grant denizenship being preserved by the Naturalization Act 1870. It must therefore be unravelled so far as may be possible by the light of the few authorities which exist: the object in view being to ascertain what differences still exist between (to use the old terms of the law) the *alta ligeantia* of the subject and the *ligeantia acquisita* of the denizen.

Old use of term "denization." [2 B. & C. 799.]

The term denization was however used formerly to denote any grant of nationality, whether by the King or the Parliament. Abbott C. J. in *Doe* d. *Thomas* v. *Acklam*, speaks of natural-born subjects "as distinguished from subjects by donation, or any other mode." The judgment in *Calvin's case,* goes even further, for it calls the subjects of a conquered country denizens.* Now the term is applied only to those who have the grant by letters patent from the King.

*[*cf. infra*]

Old distinction between denization and naturalization related to tenure of land,

The intermediate position which denizens are said to occupy between aliens and subjects, refers to the term in its broadest sense: the point to be determined is the difference between the two forms of *ligeantia acquisita*: to distinguish between the effects of denization and naturalization. The old authors, who wrote at a time when the rights of aliens were less than they are now, and when naturalization did not mean what it means to-day, dwelt on the difference as it affected the tenure of land: thus, though a denizen was a subject he was the son of an alien, and his denization was not retroactive; his father having no inheritable blood, could convey none to his son. But this distinction between alien and subject having passed away, so

* The sentence is "are all denizens of the dominion or kingdom conquered", *see* p. 92; but the meaning is that given in the text.

much of that old law as clung, so to speak, to denizens, has passed away too. and has now disappeared.

Some difficulty arises in the case of children of a denizen; for the consequential nationality of infant children which, subject to the fulfilment of certain conditions, is provided for by the Naturalization Act, does not flow from the grant of denization. But this consequential nationality is essentially statutory, and in case of letters patent would also be determined by the terms of the grant. It appears from the judgment in *Calvin's case,** that there is a discretion in the Sovereign as to the extent of the grant, which may be to an alien for the term of his life, or to an alien and his heirs (male) of his body: it may clearly include infant children already born. Under either circumstances the children so included would be denizens. Children of denizens; *[*cf. infra*]. may be included in the grant.

The reason for the limitation to heirs male is not clear: there can be little question that the grant may include the daughters of the grantee. Nor is there any ground for supposing that the letters could not be granted to a woman. Probably the wife of a denizen would also be a denizen, whether she is included in the grant or not.

But if born within the realm the children are subjects in their own right, and the consequences of their father's and their own denizenship vanishes. But if they are born abroad, their father not being a natural-born subject, they cannot have the benefit of the statutes of Anne and George II, much less of that of George III. Whether they themselves are included in the grant may th refore become an important question.

The only positive legislation which regard to denizens is contained in s. 1 of the Merchant Shipping Act 1894, which regulates their right of holding shares in British ships: and in s. 3 of the Act of Settlement, 1700, which prevents them from being of the Privy Council, or a member of either House of Parliament, or from holding any office under the Crown, or having any grant of lands from the Crown. In both these cases they are linked in the statute with naturalized subjects. The grant by the Act of 1870 of the full rights of a subject to persons naturalized has virtually repealed the restrictions of the Act of Settlement so far as naturalized subjects are concerned: they remain however the law so far as they affect denizens. The provisions of the Merchant Shipping Act are in force with regard to both. Special legislation affecting denizens. Restricted rights.

Chapter VI

I propose now to gather together what has been written on the subject, beginning with extracts from the judgment in *Calvin's case.*

Extracts from Calvin's case as to denizens.

[Rul. Ca. II, p. 583.] "The second [kind of ligeance] is called *ligeantia acquisita,* not by nature, but by acquisition or denization being called a denizen, or rather donaizen, because he is *subditus datus.*"

[p. 584.] "The second is *ligeant' acquisita,* or denization: and this in the books and records of the law appeareth to the threefold: *i.*—Absolute, as the common denizations be, to them and their heirs, without any limitation or restraint: *ii.*—Limited, as when the King doth grant letters of denization to an alien, and to the heirs male of his body, as it appeareth in 9 E. IV fol. 7, 8, in *Baggot's case*; or to an alien for term of his life, as was granted to J. Reynel, 11. H. VI: *iii.*—It may be granted upon condition, for *cujus est dare, ejus est disponere,* whereof I have seen divers precedents. And this denization of an alien may be effected in three manner of ways: by Parliament, as it was in 3 H. VI, 55, in Dower: by letters patent, as the usual manner is; and by conquest, as if the King and his subjects should conquer another kingdom or dominion, as well *ante nati* as *post nati*, as well they which fought in the field as they which remained at home, for defence of their country, or employed elsewhere, are all denizens of the kingdom or dominion conquered."

[p. 586.] "All letters patent of denization be, that the patentee shall behave himself *tanquam verus et fidelis ligeus domini Regis.*"

[pp. 586,587] "*Ligeantia*, in the case in question, is meant and intended of the first kind of ligeance; that is, of ligeance natural, absolute &c. due by nature and birthright. But if the plaintiff's father be made a denizen, and purchase lands in England to him and his heirs, and die seised, this land shall never descend to the plaintiff, for that the King by his letters patent may make a denizen, but cannot naturalize him to all purposes, as an Act of Parliament may do: neither can letters patent make any inheritable in this case, that by the common law cannot inherit. And herewith agreeth 36 Hen. VI Tit. Denizen Br. 9."

[pp. 609,610] "Now, what a subject born is, appeareth at large by that which hath been said *de ligeantia*; and so likewise *de subdito dato*, of a *donaison*: for that is the right name, so called, because his legitimation is given unto him; for if you derive denizen from *deins nee*, one born within the obedience or ligeance of the King, then such a one should be all one with a natural-born subject. And it appeareth before out of the laws of King Wm. I of what antiquity the making of denizens by the King of England hath been."

[p. 625] "The King only without the subject may make not only letters of safe conduct, but letters of denization, to whom and how many he will, and enable them at his pleasure to sue any of his subjects in any action

whatsoever, real or personal, which the King could not do without the subject, if the subject had any interest given unto him by the law in anything concerning an alien born. Nay, the law is more precise herein than in a number of other cases of higher nature ; for the King cannot grant to any other to make of strangers born, denizens : it is by the law itself so inseparably and individually annexed to his royal person (as the book is in 20 Hen. VII fol. 8). For the law esteemeth it a point of high prerogative, *jus majestatis, et inter insignia summæ potestatis,* to make aliens born subjects of the realm, and capable of the lands and inheritances of England in such sort as any natural-born subject is. And therefore by the statute of 27 Hen VIII c. 24, many of the most ancient prerogatives and royal flowers of the Crown, as authority to pardon treason, murder, manslaughter, and felony.....having been severed and divided from the Crown, were again re-united to the same : but authority to make letters of denization was never mentioned therein to be resumed, for that never any claimed the same by any protext whatsoever, being a matter of so high a point of prerogative...." [p. 626].

Extracts from the books as to denizens.

Bacon,—Abridgment (*tit.* Alien),—thus distinguishes denization from naturalization—

"Denization receives a man into the society as a new man,and makes him capable to purchase and transmit lands by descent, but not inheritable to any other relation : for though the King by his charter may admit him into the society, yet he cannot alter the law, which denied him to inherit any relations : but if he be naturalized by Act of Parliament, then he in all things inherits like a natural-born subject, because in an Act of Parliament every men's consent is included. "

Blackstone [Vol. II, p. 313 : 9th. Ed.]

After Bacon comes Blackstone :

" As to denizens. A denizen is one alien born, but who has obtained *ex donatione regis* letters patent to make him, to a certain extent, an English subject : a high and incommunicable branch of the royal prerogative. A denizen is in a kind of middle state, between an alien and natural-born subject, and partakes of both of them. But no denizen can be of the Privy Council or of either House of Parliament, or have any office of trust, civil or military, or be capable of any grant of lands and the like from the Crown."

Sir A. Cockburn.

Sir A. Cockburn, writing before 1870, says—

[Nationality, p. 28.]

The difference between the two [denization and naturalization] in point of effect is of a substantial character. Denization has no retrospective operation, while by naturalization conferred by Act of Parliament, the alien was placed in exactly the same position as if he had been born a subject. A denizen is thus in an intermediate position between an alien and a natural-born subject, and partakes of both these characters.

Chapter VI

He may take land by purchase or devise, which an alien may [*now*, might] not: but he cannot take by inheritance: for, his parent, through whom he must claim, being an alien, had no inheritable blood, and therefore could convey none to his son. And, on account of a like defect of hereditary blood, the issue of a denizen, born before denization, cannot inherit to him: but his issue, born after it may. On the other hand the son of a naturalized subject, though born before the naturalization of the father, could always derive descent through the father, and inherit as though the father had been a natural-born subject."

Legislation affecting, denizens.

The text of the legislation affecting denizens is as follows.

Act of 1870.

First, the perogative of the Sovereign is not interfered with by the Naturalization Act of 1870.

33 & 34 Vict. c. 14, s. 13.

Saving of letters of denization.

Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty.

Hall; reasons for saving the right.

Mr. Hall points out the virtue of this retention of the ancient prerogative lies in the fact that the power is unqualified, and that, no condition of residence being required, it may in some instances be convenient for foreigners to obtain the status of British subject in this way, if the Sovereign be pleased to grant it.

"There have been" he observes, "and from time to time there no doubt will be, persons of foreign nationality to whom it is wished to intrust functions which can only legally be exercised by British subjects. In such instances the condition of five years residence in the United Kingdom would generally be prohibitory. The difficulty can be avoided by the issue of letters of denization: and it is believed that on one or two occasions letters have in fact been issued with the view of enabling persons of foreign nationality to exercise British consular jurisdiction in the East."

Restrictions imposed by Act of Settlement.

The limitations imposed by the Act of Settlement are as follows:—

12 & 13 Will. III, c, 2, s. 3.

After the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland and Ireland or the dominions thereunto belonging (although he be naturalized or made a denizen (except such as are born of English parents)) shall be capable to be of the Privy Council or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands tenements or hereditaments from the Crown to himself or to any other or others in trust for him.

This section is abrogated as regards persons naturalized, but remains in force as regards denizens. It is therefore a little

difficult to reconcile Mr. Hall's statement as to the reason for the recent grants of denization with the limitation as to offices of trust, which would include consular offices abroad, unless he refers only to grants to persons born abroad of English parents which are within the exception.

The exception contained in the second parenthesis refers to the naturalization and denization of persons born of English parents. This of course means persons born abroad of English persons, who at the time had only the statute of Edward III to protect them: and that only made them "children inheritors". The parenthesis leads to the suggestion that possibly denization was resorted to for the benefit of the first generation prior to the statute of Anne: and for the second generation prior to the statute of George III: and that it may still be made use of for the benefit of the third generation in the present day, when the importance of the exception would become apparent.

The exception to the restriction.

[see p. 49.]

So much of s. 1 of the Merchant Shipping Act, 1894, as relates to denizens, and their rights with regard to the ownership of shares in a British ship, is as follows—

Rights of denizens in respect of ownership of British ships.

57 & 53 Vict. c. 60, s. 1.

Qualification for owning British ship.

A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships), namely,

* * * * *

(c) persons made denizens by letters of denization:

* * * * *

provided that any person who ... —

* * * * *

(ii) has been... made a denizen as aforesaid:

shall not be qualified to be owner of a British ship unless... on or after being... made denizen as aforesaid, he has taken the oath of allegiance to His Majesty the King, and is during the time he is owner of the ship either resident in His Majesty's dominions, or partner in a firm actually carrying on business in His Majesty's dominions.

The difficulty in following the motive of Parliament in introducing the limitations created by this section arises in connection with persons naturalized; so far as denizens are concerned the prerogative having already been limited by the Act of Settlement, by which denizens were deprived of some of the principle privileges of the subject, it was possibly considered that they were not so bound to the nation as to be worthy of the highest privilege, the right to fly the flag.

Chapter VI

Old statutes referring to denizens.

A few old statutes refer to denizens by name, and although it would appear that the reference to them is now of historical interest only, it is necessary to specify them.

5 & 6 Edw. VI, c. 11.

The *Treason Act, 1551,* which deals with the trial within the realm of treasons committed abroad, makes use of the formula " any of the King's subjects, denizens or other ".

11 & 12 Will. III. c. 7

18 Geo. III, c. 30.

The *Piracy Act, 1698*, punishes piracy or robbery upon the sea under colour of any commission from any foreign prince, committed by " any of His Majesty's natural-born subjects or denizens of this kingdom" : and the *Piracy Act, 1744,* which deals with hostilities committed upon the sea under colour of any commission from any of the King's enemies, punishes the offence when committed by " persons being the natural-born subjects or denizens of His Majesty".

33 Geo. III, c. 52 s. 141.

In the *East India Company Act, 1793,* the bail or security to be given by persons prosecuted for penalties under the Act, is to be " by natural-born subjects or denizens."

Probable use of the term.

It is not improbable that in these Acts (and any others of the same period in which a similar form is used) the word " denizen " has its old meaning, and includes persons naturalized.

Conclusions as to law of denization.

It should be possible now to come to some definite conclusions as to the law on the subject of denizens, in spite of the somewhat shadowy nature of the authorities.

Rights of subjects conferred with express exceptions.

First, they are made subjects : they therefore possess all the rights of a British subject, except those which are expressly withheld from them by two statutes—the Act of Settlement, and the Merchant Shipping Act.

Rights of natural-born subjects not conferred.

Secondly, they are not made natural-born subjects, nor are they granted the rights of natural-born subjects. In view of the statutory limitations just referred to, such a grant would be inoperative : in this they differ from naturalized subjects, to whom the rights of natural-born subjects are granted. It has been pointed out that the Naturalization Act preserves the distinction between British subjects and natural-born British subjects.

[*see* p. 53.]

Renunciation of denization.

It follows therefore that those sections of the Act of 1870 which deal simply with British subjects apply to denizens, but that those which deal with natural-born British subjects do not apply. It would therefore appear that a denizen may, under s. 6, renounce his allegiance by becoming naturalized in a foreign country, though a subsequent certificate of re-admission to Bri-

tish nationality under s. 8 could not be granted to him. In the former case presumably he would be required to return the document conferring the status granted to him.

Duties of British subjects imposed.

Thirdly, being made subjects, they are also liable to all the duties of British subjects : that is to say, they fall under the ordinary law of the land, and so much of it as applies specially to aliens does not concern them. This rule is of importance in connection with offences on the high sea and abroad, punishable under the English extra-territorial legislation. The term "any person" when used in such criminal statutes, refers to any British subject, and it must therefore include denizens. And generally it may be assumed that they fall within the term "British subject" whenever it is used, without express reference : *e. g.* in s. 686 of the Merchant Shipping Act, 1894, which defines the jurisdiction in the case of offences on board ship. The soundness of the comment made on the express reference to denizens in certain old statutes becomes therefore very material.

Extra-territorial legislation applicable.

[*see* p. 96.]

Fourthly, the foregoing rule raises the question whether letters of denization are limited to the United Kingdom, or extend to the whole of the dominions, and whether the status they confer is entitled to recognition beyond the Empire.

Unlimited grant.

No limitation being referred to in the authorities, it may be made co-extensive with the King's dominions ; and, seeing that the grant may also be made subject to such conditions as the King chooses, it is not unreasonable to suppose that in the absence of limitation the grant is intended to operate throughout the dominions. It follows that it will operate in all places where the King has jurisdiction : on British ships, and in foreign countries where the right of foreign jurisdiction exists. Presumably also the grant would be recognised in foreign countries, as part of the mutual recognition of the kingly prerogatives, although this would probably not apply to the country to which the denizen was formerly subject, unless by the law of that country he had, by taking the oath of allegiance to a foreign Sovereign, lost his nationality : or unless that law sanctioned his abandonment of his old allegiance in this manner.

Recognition abroad.

Limited grant.

But the grant may clearly be limited to a certain part of the Empire : to the United Kingdom only, or to any specified Colony. It would seem that denization was occasionally granted to induce foreigners to take up their residence in a Colony, which was in

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process of settlement. In the case of New South Wales there was a delegation of the right to the Governor. Although this seems in express contradiction with one of the principles laid down in *Calvin's case*, the fact remains that there is still an Act in force in New South Wales [the Naturalization and Denization Act of 1898, based on 9 Geo. IV, No. 6] passed by the Colonial Legislature, conferring the right to make denizens in the Colony on the Governor. The subject belongs properly to the chapter dealing with the whole question of nationality in its colonial aspect: but the principle involved must be mentioned here.

[*see* p. 93.]

Exercise of prerogative by Governor of New South Wales.

[*see* Chapter XV.]

The Act is not only passed by the Colonial Legislature, but it has not the express sanction of any Act of the British Parliament. It is described in s. 14 of the same Act as the exercise by the Governor of the prerogative right of the Crown. The delegation must therefore have been made by the King, and it may perhaps be inferred from the royal assent having been given to the Act.

Power of Sovereign to delegate his right formerly denied.

Chapter VII.

Of Naturalization.

Chapter VII

The acquisition of British nationality by statute prior to 1844, when the first general Act was passed—7 & 8 Vict. c. 66—meant naturalization by statute specially applicable to the person naturalized. The power of Parliament to pass such statutes still of course exists, and it would appear is still resorted to, probably in cases of necessity, when the conditions of residence cannot be complied with. It seems indeed a more appropriate course to adopt than denization in the case mentioned by Mr. Hall, where nationality is necessary for holding office under the Crown abroad, for the reasons already indicated. Moreover Parliament is not in any way fettered as is the Crown in the exercise of its prerogative, and may, if it choose, grant the most complete rights of citizenship. It would appear however, from the Report of the Inter-departmental Committee, that

Naturalization by special statute.

> "instances have occurred in which such Acts have been so imperfectly drafted as to give rise to questions of great difficulty, and to cause much disappointment, especially by the absence of provisions for the naturalization of the children of the naturalized person".

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Before considering the Act of 1870, it will be interesting to note briefly the changes in the law introduced by the Act of 1844, which was styled "an Act to amend the law relating to Aliens".

Analysis of Act of 1844.

So much of certain recited Acts, among which was the Act of Settlement, as was inconsistent with the provisions of this Act was repealed (s. 1). So much of 1 Geo. I, c. 4, as required a special clause in all Naturalization Acts to the effect that the person naturalized should not be a Privy Councillor, or a member of either House of Parliament, or should not be capable of holding any office of trust under the Crown, or any lands by grant from the Crown (the limitations of the Act of Settlement), was repealed (s. 2). Persons born out of the United Kingdom of mothers who were natural-born subjects, were declared capable of taking any estate, real or personal (s. 3). Alien friends were allowed to take and hold every species of personal property, except chattels real, as if they were natural-born subjects (s. 4). Alien friends were also allowed, if residing in the United Kingdom, to hold lands and houses for their residence or occupation, or for business, for a term not exceeding 21 years, with all consequent rights, except the right to vote at the elections of members of Parliament, as if they were natural-born subjects. (s. 5). The Secretary of State had power to grant certificates of naturalization to aliens who should come to reside in the kingdom "with intent to settle therein". The effect of the certificate was to enable the alien to "enjoy all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit", except being of the Privy Council, or a member of either House of Parliament. The Secretary of State further had power to except such rights and capacities as he thought fit (ss. 6 and 8). The oath of allegiance was to be taken within 60 days after the grant of the certificate (s. 10). A woman married to a natural-born subject or a person naturalized, was to be deemed and taken to be herself naturalized, and to have all the rights and privileges of a natural-born subject (s. 16).

Effect of certificate under Act of 1844.

Act of 1847. [*see* Chapter XV.]

A further statute was passed in 1847, dealing specially with colonial legislation on the subject, and declaring that the Act of 1844 did not extend to the Colonies.

The existing law was passed in 1870, but although it is called the Naturalization Act, the subject of naturalization is not dealt

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with till the 7th. section, the earlier sections being concerned with the status of aliens, and with expatriation.

Grant of the certificate under the Act of 1870.

We have to consider first the two paragraphs of s. 7 which provide for the application and grant of the certificate of naturalization.

33 & 34 Vict. c 14, s. 7 : [1st. & 2nd. paras.*]

Certificate of naturalization.

An alien who, within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

The applicant shall produce in support of his application such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

Analysis of first part of s. 7.

These paragraphs analysed may be resolved into the following elements.

A.—Conditions imposed by the statute.—

Conditions imposed on on applicant.

As to the past—The applicant must either have resided in the United Kingdom for not less than 5 years, or have been in the service of the Crown for not less than 5 years, within a time prior to the making of the application which is to be limited by the Secretary of State. By the Instructions issued by the Home Secretary in 1870, this period was fixed generally at 8 years : but it may be specially fixed at a shorter period in individual cases.

As to the future—The applicant must intend either to reside in the United Kingdom, or to serve under the Crown.

B.—Discretionary powers of the Secretary of State.—

Powers of Secretary of State.

(a) He may declare the period prior to the application within which the 5 years residence in the United Kingdom, or the 5 years service under the Crown, may have occurred : he may do this by general or special order.

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* The remaining paragraphs of the section are considered in the following Chapters :—

3rd. para. in Chap. VIII,—Consequences of Naturalization ;
4th. para. in Chap. XIII,—Doubtful Nationality ;
5th. para.—Naturalizations prior to the Act—at the end of this Chapter.

(b) He may prescribe the evidence of residence or service by which the application is to be supported : there is nothing which requires this to be by general order.

The general drift of the evidence required by the Secretary of State in ordinary cases is indicated in the Instructions. Certain facts have to be stated from which the applicant's relations socially and commercially to the community may be gathered ; from these facts it would seem that the essential inference to be drawn is that these relations are not likely to be voluntarily or speedily disturbed. The facts are—the applicant's residence, age, and occupation : whether he is married or single, and whether he has any children under age residing with him. Further, his respectability and loyalty must be vouched for by four householders who are themselves British born subjects, each of them being required to state the period during which he has personally known the applicant.

[*see* Appendix to this Volume.]

Nature of evidence required by Secretary of State.

(c) He is given an absolute discretion as to granting or withholding the certificate, and need assign no reason for his decision.

So far as these conditions relate to the past they do not call for any remark : but the intention to reside in the United Kingdom in the future which is insisted on, would appear, on the face of it, to be considered of some importance. But it is more than doubtful whether it is so regarded, for nowhere is any answer to be found to the questions—How long is it necessary for this residence to continue ? Does the grant of nationality lapse with the termination of the residence, or more precisely, of the intention to reside ? Yet the condition is inserted in the certificate itself.

Examination as to effect of condition of intention to reside :

The same questions arise also with regard to the intention to serve under the Crown, except that they are simplified by the fact that service under the Crown cannot be terminated without permission from the Sovereign. Yet even in this case there is nothing to show that the grant lapses when the service terminates.

and of intention to serve under the Crown.

Negative evidence that the grant does not lapse may be derived from the case of *re Bourgeoise*, to be presently considered in connection with another branch of the subject. The facts, so far as the present question is concerned, were shortly these : M. Bourgeoise, having fulfilled the five years condition of previous residence, became naturalised : in due course of commerce he

[L. R. 41, Ch. D. 310.]

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made a considerable fortune, and retired to France where he spent the rest of his days. A more simple case of abandonment of the intention to reside could not be found, but the question was not mentioned either by counsel or the Courts.

The amending Act which was passed in the same year, known as the Naturalization Oaths Act, 1870, also furnishes evidence of a negative character, as s. 2 deals with the case of fraud which had been omitted from the principal Act.

33 & 34 Vict. c. 102, s. 2.

Consequences of fraud under second Act of 1870.

Any person wilfully and corruptly making or subscribing any declaration under the Naturalization Act 1870, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor, and be liable to imprisonment with or without hard labour for any term not exceeding twelve months.

The declarations to which the section applies.

The declarations referred to in the principal Act are, of alienage, under ss. 3 and 4 : and of British nationality, under s. 6 : and these do not seem likely to give rise to false statements. But the information required by the Instructions in support of the application, is to be given by declaration made before a Magistrate or other person authorised to receive statutory declarations in pursuance of the Act 5 & 6 Will. IV, c. 62. The making of this rule falls within the powers of the Secretary of State under s. 7 (2nd. para.), and therefore the above section applies to false statements made in such declarations. The consequence is imprisonment : but no power is taken to cancel the certificate, and this furnishes a strong argument that no cancellation was contemplated. Yet not a conclusive argument : nor one which the Courts could accept without further question.

No power taken to cancel the certificate.

The possibility of such a question arising in connection with ownership of shares of British ships occurs at once, and it is not difficult to imagine a case of fraudulent declaration by an alien to obtain naturalization, and so to enable him to hold such shares. It is interesting to note however that this case has been foreseen and specially provided for, for the first section of the Merchant Shipping Act, 1894, insists on continued residence in the case of naturalized owners.

This section has already been set out in so far as it deals with denizen owners, it must now be set out in so far as it deals with naturalized owners.

57 & 58 Vict. c. 60, s. 1. **Chapter VII**

Qualification for owning British ship.

A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships), namely,

* * * * *

Ownership of British ships by persons naturalized,

(*b*) persons naturalized by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or Ordinance of the proper legislative authority in a British possession :

* * * * *

provided that any person who ... —

* * * * *

(*ii*) has been naturalized...as aforesaid :

shall not be qualified to be owner of a British ship unless,...on or after being naturalized...as aforesaid, he has taken the oath of allegiance to His Majesty the King, and is during the time he is owner of the ship either resident in His Majesty's dominions, or partner in a firm actually carrying on business in His Majesty's dominions.

dealt with by M.S.Act.

In such a case as I have supposed therefore, the fulfilment of the fraudulent intention not to reside if carried out, would defeat the very object of the fraud, for the ownership would come to an end, and sections 28 and 29 of the same Act provide an effective means for stiking off the register names of persons not properly entitled to be owners.

Examination of the consequences of fraud from the point of view of Courts of Law.

But there are other privileges limited to British subjects. It is quite conceivable that the question should arise in connection with the right to vote, as, for example, on the trial of an election petition : that one of the voters was an alien who had obtained a certificate of naturalization by means of fraud. In support of the petition evidence is adduced to show that the object of obtaining the naturalization was merely to gain the right to vote : that the intention to reside never in reality existed : that the statements in the declarations of the householders were false, that (to take an extreme case) they were not themselves British subjects, but that the whole proceedings were part of a scheme of disloyalty. It is not unreasonable to suppose that in such a case, the fraud being established, the Court would extend to administrative acts that wide doctrine which Lord de Grey laid down in *the Duchess of Kingston's case,*—" Fraud vitiates even the most solemn proceedings of Courts of Justice."

If fraud in obtaining certificate proved, Courts might possibly ignore it. [20 St. Tr. : 2 Sm. L. C. 770.]

The omission of the subject from the first Act of 1870, and the fact that fraud is expressly dealt with in the amending Act of the same year, may be conclusive to prove that there is no power of cancellation : that is, as between the State and the

person to whom the certificate has been granted. But it is submitted that the question is not precisely the same when the rights of third persons are concerned. I do not propose to argue the point at length, but merely to draw attention to a specific case of fraud in order to show that a question may be involved in which parties, other than those immediately concerned, may be interested.

Where rights of third parties intervene the question is not precisely the same.

In some Colonies express power of cancellation is taken in the local legislation. But the whole question of colonial naturalization stands upon a different footing to that of the United Kingdom, and the question must be reserved till we come to the chapter dealing with that subject.

Power to cancel certificate in Colonial laws.

[*See* Chapter XV.]

NOTE.

Historical aspect of the question of cancellation for fraud.

Inter-departmental Report.

The Report of the Inter-departmental Committee contains some interesting information on this subject, which I venture quote—

The Act [of 1844] made it the duty of the Secretary of State to inquire into the circumstances of each case, to consider the memorial, and the grant or refusal of the certificate was in his discretion. In 1856 the Secretary of State was advised that it would be lawful to insert in certificates of naturalization a clause to the effect that such certificates were granted upon condition that the grantees should continue to reside permanently in the United Kingdom, and that the certificates should be determinable on the grantee ceasing so to reside This advice was acted on, but the practice of granting conditional certificates of naturalization was disapproved by the Royal Commissioners of 1869, and ceased upon the repeal of the Act of 1844 by the Act of 1870.

The Secretary of State has been advised that a certificate under the latter Act is not revocable on the ground of having been obtainded by fraud, and that is not competent for him to annex any condition, as to residence or otherwise, providing for the avoidance of the certificate for breach of the condition."

Cutler on Naturalization.

I take also the following from Mr. Cutler's little book, published shortly after the Act of 1870 was passed.

In the certificate granted under the Act of 1844, the condition as to permanent residence was thus expressed—that the grantee

[p. 8.]

" should continue to reside permanently within the United Kingdom, and that if at any time thereafter he should voluntarily be absent for a period of six months, without licence in writing under the hand of one of Her Majesty's Principal Secretaries of State, he should be deemed to have ceased to reside permanently within the United Kingdom : and then and in such cases the certificate and all the rights and capacities thereby granted should cease and determine ".

This condition was inserted in virtue of the large powers with which the Secretary of State was invested as to imposing conditions in granting the certifieate.

[p. 28.]

" In the bill as read a second time last session, there was a section

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The third paragraph of s. 7 imposes a limitation on the effect of the certificate when granted: the matter is very important, and it must form the subject of a separate chapter.

[see Chapter VIII.]

The fourth paragraph deals with quite a different subject from those which precede it: the settlement of doubts as to nationality. This, together with the Legitimacy Declaration Act 1858, will also be considered in a special chapter.

Grant of certificate to remove doubts.

[see Chapter XIII.]

The fifth and last paragraph reverts to the simple certificate of naturalization, allowing it to be granted to aliens who had already been naturalized prior to the coming into force of the Act.

33 & 34 Vict. c. 14, s. 7: [5th. para.]

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms, and subject to the same conditions, in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

Grant of certificate to persons naturalized before the Act.

The object of this provision was to enable persons who possessed the limited certificate allowed by the Act of 1844, to obtain the new certificate authorised by the Act of 1870. It deals with a case which is the converse of that dealt with in s. 6 (1), that of British subjects already naturalized in foreign countries who were nevertheless desirous of remaining British subjects. In that case the limit of time for making the necessary declaration was two years, whereas under this paragraph there is no such limit within which the application has to be made. The application for the new certificate was therefore optional, and as the repeal of the Act of 1844 was made subject to the usual condition, that it did not affect any right previously acquired, and as there is no other provision dealing with the old certificates, the result must have been that for many years after 1870, both kinds of certificates must have been in existence—perhaps are so still. A question arises as to whether children born abroad of persons

[see Chapter XI - Repatriation.]

Application for new certificate optional.

empowering a Secretary of State to revoke a certificate of naturalization "on its appearing to him that the grantee thereof has resided out of Her Majesty's dominions for a term exceeding two years, and that he intends permanently so to reside: or on its appearing to him that the grantee of such certificate has acted in a manner inconsistent with his allegiance as a British subject". This section, in consequence of the objections made to it, was struck out during the passage of the bill through Parliament, and therefore a certificate of naturalization granted under the Act is irrevocable."

NOTE on cancellation for fraud, *contd.*

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naturalized are entitled to the benefit of the statutes of George II and George III. If they are so entitled, we shall have to consider whether the same principle applies to the children of persons possessed of certificates under the Act of 1844, which were not exchanged for the new certificates of 1870. But it is necessary first to study the words of s. 7 very carefully, and this I propose to do in the next chapter : a comparison of the two certificates is involved in the enquiry.

Children of persons naturalized.

Statutory references to persons naturalized.

There are occasional references to naturalized persons in Acts of Parliament in conjunction with natural-born subjects, similar to these already mentioned as to denizens. Thus, in the Constitution Acts of New South Wales and Victoria, which are embodied in the schedules to 18 & 19 Vict. cc. 54 and 55 respectively, the qualification of persons entitled who may be summoned to the Legislative Councils of the Colonies is limited to those who are natural-born subjects or naturalized "by Imperial or Colonial Act" in the first case, "by law" in the second : and this is still the law, as the Constitutions of the States are preserved by the Commonwealth Act, 1900.

63 & 64 Vict. c. 12 : Sched. s. 106.

The provisions of the Merchant Shipping Act 1894, with regard to the ownership of British ships by naturalized persons, have already been set out.

24 & 25 Vict. c. 121.

There is a provision in s. 3 of the Domicile Act of 1861, to the effect that the Act is not to apply to foreigners who have been naturalized in any part of the dominions. The meaning of the section is far from clear, and will be discussed at a later stage. I do not think that there are any other references to naturalized subjects in the English statutes.

THE OATH OF ALLEGIANCE.

Oath of allegiance necessary to complete naturalization.

Naturalization is not complete until the oath of allegiance to the King has been taken. Under the Act of 1844, the oath was to be taken within 60 days of the date of the certificate, failing which it was, presumably, not issued and cancelled. The 2nd. para. of s. 7 of the Act of 1870 provides that the certificate "shall not take effect until the applicant has taken the oath of allegiance ", the form of which is prescribed in s. 9.

33 & 34 Vict. c. 14, s. 9.

Form of oath.

The oath in this Act referred to as the oath of allegiance shall be in the form following : that is to say,

"I, do swear that I will be faithful and bear true allegiance to His Majesty King Edward VII. His Heirs and Successors, according to law.

So help me God".

By the Naturalization Oaths Act 1870, power is conferred on the Secretary of State to make regulations with regard to oaths, under the conditions prescribed for other regulations by s. 11.

33 & 34 Vict. c. 102, s. 1.

Regulations as to oaths.

The power of making regulations vested in one of Her Majesty's Principal Secretaries of State by the Naturalization Act, 1870, shall extend to prescribing as follows:

(1) The persons by whom the oaths of allegiance may be administered under the Act:

(2) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested:

(3) The registration of such oaths:

(4) The persons by whom certified copies of such oaths may be given:

(5) The transmission to the United Kingdom for the purpose of registration or safe keeping or of being produced as evidence of any oaths taken in pursuance of the said Act out of the United Kingdom, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of the United Kingdom in pursuance of this Act:

(6) The proof in any legal proceeding of such oaths:

(7) With the consent of the Treasury, the imposition and application of fees in respect of the administration or registration of any such oath.

The two last paragraphs in the eleventh section of the Naturalization Act, 1870, shall apply to regulations made under this Act.

The last paragraph of the section refers to the effect and operation of these regulations in the Colonies: a subject which will be considered presently. [see Chapter XVII.]

Solemn affirmation in lieu of oath.

By s. 3 of the Interpretation Act, 1889, the word "oath", in the case of persons for the time being allowed by law to affirm or declare instead of swearing, includes affirmation or declaration, and "swear" includes affirm and declare. An affirmation of allegeance may therefore be substituted by such persons for the oath of allegiance. Although the Promissory Oaths Acts, 1868, expressly provides that nothing in the Act shall affect "the oath taken by aliens on being naturalized," [s. 14 (8)] the form of affirmation for allegiance may be borrowed from s. 11 of that Act: that is to say, the words "solemnly, sincerely, and truly declare and affirm" will be substituted for the word "swear", and the words "So help me God" will be omitted. 31 & 32 Vict. c. 72.

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Aliens cannot take oath of allegiance except to become naturalized.

The law of England does not contemplate, except, I believe, in one case, the possibility of an alien taking the oath of allegiance for any other purpose than that of becoming naturalized: s. 9 of the Promissory Oaths Act expressly provides that no persons shall be required or authorised to take the oath of allegiance except the officers specified in the Act* : and it may be assumed that when the taking of the oath is required on assumption of office, this in itself precludes foreigners from being appointed to the office.

44 & 45 Vict. c. 58.

Aliens serving in the army.

The exception above referred to is contained in the Army Act. By s. 95, an alien may, by consent of the King, serve in the army, so long as the number of aliens serving together in any corps does not exceed one in fifty British subjects; though he cannot hold higher rank than that of a warrant or non-commissioned officer. An alien on enlistment would take the oath of allegiance under s. 80 (4). If he is a "negro or person of colour" he is deemed, by s. 95 (2), while serving, to be entitled to all the privileges of a natural-born British subject. The proportion of one in fifty is not observed in the case of negroes or persons of colour.

The law does however contemplate the converse case of a British subject taking the oath of allegiance to a foreign Sovereign without becoming naturalized in the foreign State, and imposes certain penalties for so doing: this will be considered in connection with the larger question of Ex-patriation.

[*see* Chapter X.]

Chapter VIII.

Of the Consequences of Naturalization.

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Does naturalization transform an alien into a subject?

The last chapter, dealing more especially with the details of naturalization, proceeded on the usual assumption that naturalization transformed an alien into a British subject. The reason for this must now be examined, not, it is needless to say, with the object of throwing any doubt upon the question, but because it has an important bearing on the subject of colonial naturalization hereafter to be considered. The word "naturalization" itself gives no clue to its accurate meaning, for, though it has an obvious

* and the persons specified in the Clerical Subscription Act, 1865, and the Parliamentary Oaths Act, 1866, or the other Acts mentioned in the saving clause, s. 14.

reference to the status of the natural-born, it covers the mere grant to an alien of the rights and duties of a natural-born subject, he remaining an alien, as well as the transformation of an alien into a natural-born subject.

No definition in Act of 1870.

Of the many curious points which arise in connexion with Naturalization Act, perhaps the most curious is that it does not contain any definite statement that naturalization is the process by which an alien becomes a subject. Nor can the word be said to have a well-defined meaning like "denization"; its only meaning is that which the law under which it is granted gives to it: in England its meaning has not been constant, and it still varies in each Colony.

as in the French Civil Code.

The Civil Code of France contains this express provision :—

Art. 8. Tout Français jouira des droits civils.
Sont Français :

* * * *

5°. Les étrangers naturalisés.

The article then proceeds to declare who can be naturalized.

It is this express statement of the prime result of naturalition which is missing from the English statute, so far as s. 7 is concerned.

The intention of the Act is indicated in other sections. Thus, s. 3 deals with the ex-patriation of naturalized aliens, and refers to them as subjects of a State "who have been naturalized as British subjects"; they may "divest themselves of their status as such subjects", and thenceforward are regarded as aliens. And the certificate declares that the person to whom it is granted "is hereby naturalized a British subject". But this does not carry us any further, for the certificate cannot go beyond the section on which it is based: and "British subject" in s. 3, must be read by the light of s. 7. The child of a father who has been naturalized, who has fulfilled certain conditions, is described in s. 10 (5) as a "naturalized British subject": and it may be that this term is a necessary one to describe the result of naturalization.

Analysis of s. 7.

The first part of the third paragraph of s. 7 merely confers on an alien the rights, powers, and privileges, and imposes the obligations, of a natural-born British subject. The section does not even begin with the form, "an alien desirous of becoming a British subject may apply for a certificate of naturalization". It is drawn on precisely the same lines as s. 2, which confers on aliens the right to take, acquire, hold, and dispose of real property "in

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the same manner in all respects as a natural-born British subject ". Now, just as this grant does not confer citizenship on the alien, so the grant of further privileges on the alien under s. 7 does not, so far as the actual words used are concerned, of necessity confer complete citizenship.

Grant of rights of subjects does not necessarily make a subject.

The position of an alien enjoying full rights of citizenship and still remaing an alien, is no more impossible than that of an alien enjoying some of those rights. Even the addition of the oath of allegiance would not necessarily complete the status of subject, although the presumption is that an alien can only take the oath of allegiance for the purpose of becoming naturalized. But it is not a fundamental principle ; and there is an example of an alien enjoying full rights in the case of negroes and persons of colour enlisting in the army, who, as we have seen, are to be deemed entitled, whilst serving, to all the privileges of a natural-born subject : and the oath of allegiance has to be taken on enlistment.

Case of alien negroes enlisting. [*cf.* p. 108.]

What is wanted is the express enactment in the law that the grant of the certificate and the taking of the oath of allegiance combine to make the alien a British subject. It is only inferentially that the Act says that he is made a " naturalized British subject.

The old authorities it is true, always attached this meaning to naturalization, that it was the admission of an alien into the society of the State as a subject : but such a broad definition takes no account of the various degrees of naturalization, and the existence of these variations makes it a not very useful definition for the term as used in the Act. Now that naturalization has been dealt with by statute generally instead of specially, we may reasonably expect to find some indication of intention in the section itself which deals with the certificate.

Variations in meaning of naturalization.

The second part of the third paragraph of s. 7 contains this qualification : that the naturalized alien shall not, when within the limits of the foreign State *of which he was a subject* previously to being naturalized, *be deemed to be a British subject* unless he had *ceased to be a subject of that State* in accordance with its laws, or in pursuance of a treaty.

In this qualification it seems clearly indicated that in granting naturalization to the subject of a foreign State, it was intended that he should become a British subject : for if it is expressly

enacted that, under certain conditions, he *is not* to be deemed a British subject in a certain State, it follows that if those conditions do not exist, he *is* to be deemed a British subject in that State: and therefore in all other States: and therefore in the United Kingdom. Whether it follows further that he is to be deemed a British subject in the Empire is one of the problems with which the chapter deals.

Intention to make the alien a subject derived from second part of s. 7.

It would therefore *seem* to be clear that by naturalization into the United Kingdom an alien not only obtains all the rights of, but becomes to all intents and purposes, a natural-born British subject.

This is perhaps not exactly the manner in which we should expect to find so important an intention declared. It has more the appearance of being based on the assumption that the meaning of naturalization is well-known, and that it is that which is in common use. It might possibly be said that it is an incorporation of the common interpretation which is given to the word, just as in the converse case of a British subject being naturalized into a foreign State, it is assumed in s. 6 that naturalization implies becoming a subject of that State: though there, as under English law, the admission of the alien by naturalization may be to some only of the rights of citizenship.

If our law were as simple as the French Code, such a discussion as the present would be impossible. But, although we have not yet approached them, we know that there are difficulties connected with the interpretation of s. 7; it is sufficient to mention one—that it is more than doubtful whether the grant of citizenship in the United Kingdom carries with it citizenship throughout the Empire. The mere existence of such a doubt must make us pause before we apply to the term naturalization, as used in the Act, that old meaning which the Judges gave to it at a time when, although the King had many dominions beyond the sea, yet the constitutional and legal relationship between the Colonies and the Mother Country had hardly begun to attract attention.

The intermediate State between aliens and subjects occupied by persons naturalized.

The point which it is difficult to grasp is that there should be some intermediate status between subject and alien: such a person as a subject having only qualified rights of a subject.

The argument, based on the construction of s. 7, used above, to show that naturalization does mean that the alien ceases to be

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an alien, and becomes a subject, is only the argument lying on the surface of the words. We have yet to see to what degree he becomes a subject, what is meant by a "naturalized British subject"; and in order to do this, the section requires much fuller analysis.

How far he becomes a subject under s. 7 needs further examination.

It may be assumed that since 1870, the desire of a foreigner when he applies for a certificate of naturalization is to change his national status, and, by taking the oath of allegiance to the English King, to throw off his allegiance to his former King or State. Presumably familiar with the laws of his own country, he knows whether he will be able to achieve the last part of his desire; but his thoughts being set towards the country of his proposed adoption, it is naturally of importance for him to know what the consequences of his naturalization in the United Kingdom will be: whether he will be received a British subject to all intents and purposes. For if the result of naturalization is that his own country casts him off: and if there are limitations to his rights in his new country after he has become naturalized, what is his position likely to be in a third country, should his business or pleasure take him there?

Different cases examined in which the question arises.

There are three eventualities which will present themselves to his mind: what will his position be in the United Kingdom, or the British dominions? What will it be if he finds himself again in his own country? What will it be if he finds himself in other countries? In other words, the result of his becoming a naturalized British subject may vary according as it is to be considered or determined by the authorities, legal or other, of the United Kingdom, or the British dominions: of his own country: or of other countries.

The old national prejudice which prevented naturalized subject accepting any office of trust or profit under the Crown, and forbad the grant to them by the Crown of lands, tenements, and hereditaments, has not yet died away; it still subsists, as we have seen, in the matter of their tenure of shares of British ships compelling residence during ownership. Without going deeper into the section than the condition of residence which the Act imposes, there is in this another important qualification of rights. Assuming these to be the only differences, yet they are important not only from the fact of there being differences, but from their nature, which seems to point to some underlying fundamental

Condition of residence and law as to tenure of ships shows that there is a difference even in United Kingdom.

principle—possibly, that necessity for continued residence. It would almost seem as if the law compelled in the case of British ships, in this very practical way, the fulfilment of the promise of residence, and kept a practical check on fraudulent assertions of intention. Therefore, even apart from the difficulties in the construction of s. 7, we are not in a position to say that naturalization makes the quondam alien a British subject for all intents and purposes. It seems truer to say that the law does regard residence as of importance; and, though it declines to enforce it, and has not provided a remedy for non-fulfilment of the condition, yet, until children are born within the realm it does not allow the taint of alienage to be removed from the family, and then only with regard to the children.

We must now consider the fourth paragraph of s. 7 which declares what the effect of the certificate is.

33 & 34 Vict. c. 14, s. 7: [4th para.]

Effect of certificate.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign State of which he was subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

Apparent meaning of the provision.

The impression left on the mind after the first perusal of this provision is, that the Legislature had two things very clearly in view: first, the position of the naturalized alien in the United Kingdom; and secondly, his position abroad: and that it established this broad rule—that the naturalized alien is to become a British subject in the United Kingdom, and is so to be regarded everywhere by the British authorities, except when he is in his former State, if the laws of that State have not recognised his expatriation.

Analysis of provision results in doubt as to its meaning.

Yet directly we begin to analyse the grammatical construction of the paragraph, the clearness of intention becomes more than problematical, and the closer the analysis is pressed the deeper becomes the obscurity surrounding both intention and meaning. All who have dealt with the question are in agreement on this point.

In the preliminary consideration of this provision it was pointed out that the first part of the paragraph does not of itself make nationality the direct consequence of the grant of the certificate, but that it only results by inference from the language of the second part. And now again, when we come to its grammatical analysis, the correlation of the two parts of the paragraph is exceedingly difficult to grasp. The use of the words " shall in the United Kingdom " suggests that the consequences of the certificate in the United Kingdom are to be first considered : but this idea is dissipated by the introduction of the conjunctive phrase "with this qualification" : for his rights in the United Kingdom cannot be qualified by a limitation of his rights in a certain foreign country. It seeems evident therefore that a larger meaning than the normal one is to be given to the expression "in the United Kingdom" where it is first used. If the qualification has any meaning, the way in which it is worded shows that the first part of the paragraph must apply to the effect of the certificate both when the holder of it is abroad, as well as when he is " in the United Kingdom" ; and, therefore, that it can only mean that he is to be regarded as a British subject when he is abroad in every case except the one mentioned in the second part.

First use of "In the United Kingdom."

There is here a question of what may be called constitutional draftsmanship, which must not be lost sight of, for the proper construction of the paragraph may depend on it. What does it mean when we say that a person is to be considered as a British subject abroad ? Legislation couched in these terms might appear to assume to give general instructions to all and sundry that the person in question is a British subject, and to conform themselves accordingly. But this form of legislation is unknown, and moreover unnecessary, for the recognition of nationality depends on other principles. Assuming then that the second part of the paragraph does contain an implied meaning that the person naturalized is to be deemed to be a British subject abroad, to whom is the consequent command addressed ? The answer at first sight seems to be, the diplomatic authorities who watch over the rights of British subjects abroad. But directly we get to this not impossible construction, we are forced to reconsider it, for it ignores the words from which the difficulties spring— " shall in the United Kingdom ".

Difficulty in in the way of accurate drafts manship.

The following seems to be a possible construction : that the words "shall in the United Kingdom be entitled" do not relate to the presence of the naturalized person in the United Kingdom, but *to the persons in the United Kingdom,* whether Courts of Law or other authorities, whose duty it is to consider and deal with any question concerning his rights : in other words, that they relate to the case of *the question being raised* "in the United Kingdom " : that is to say, the question what rights the person naturalized has in a foreign country, which may well come up for adjudication in the English Courts. The hearing of questions involving the rights abroad of persons in the United Kingdom is of almost daily occurrence in the Courts : and when this is admitted, the limitation of the second part as regards his former State becomes intelligible : when he is in that State the rule is to be modified in favour of the laws of that State.

Probably relates to questions being raised in the United Kingdom.

But the words " in the United Kingdom " are used a second time : his rights and obligations are the same as those " to which a natural-born subject is entitled or subject in the United Kingdom ". And then immediately come a series of questions most difficult to answer. Has he not the rights and obligations of a natural-born subject abroad ? In civil matters may he not, if he is abroad, sue in the English Courts as a subject may sue, more especially in the matter of giving security for costs ? And is he not liable to be sued as a subject may be sued, under the provisions of Order XI ? In criminal matters is he not liable to punishment, as a British subject is liable, for breaches of the extra-territorial laws of England, or is he exempt, as an alien is exempt, from their operation ? And when he is in a country in which the King exercises foreign jurisdiction, may he not sue and be sued in the Consular Courts ?

Second use of " in the United Kingdom ".

Questions to which this give rise,

as to position abroad from a legal point of view ;

Nor is it the law only which affects the natural-born British subject when he is abroad, giving him rights and imposing on him obligations. He is entitled also to diplomatic protection. Is not a person naturalized entitled to the same protection ?

from a diplomatic point of view.

Nor is this all. What of the rest of the Empire ? What are the rights and obligations in the Colonies of a person naturalized in the United Kingdom ? What is his position if the question of his rights come to be decided by a Colonial Executive or a Colonial Court ? These many questions find no answer in the text of the law.

As to position in Colonies.

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While, therefore, it seems possible to find a meaning to the words " in the United Kingdom " when used for the first time, the second use of them introduces so much complexity that it renders the whole provision almost unintelligible. It must be confessed that the argument in favour of the broad construction of the provision fails to meet all the difficulties to which the analytical interpretation of its language gives rise.

The narrowest possible construction.

We must now turn to the opposite or narrowest possible construction. The argument is that the words " in the United Kingdom " mean what they say, and must be construed in their natural sense ; that is to say, that the rights and obligations are limited to the United Kingdom. So far as can be judged from a document to be presently mentioned, this argument refers to these words when used first in the paragraph : *i. e.* to the sentence " shall be entitled in the United Kingdom ". These words indicate clearly, it is said, the limitation which it was intended to impose on the grant of the certificate of naturalization : and further, that there is nothing in the enactment showing an intention of the Legislature to concern itself with the consequences of the grant of the certificate abroad. The result of this would be that beyond the limits of the United Kingdom the naturalized alien would drop his naturalization and become an alien. What the consequences would be is a question which the argument does not concern itself with : there is an assumption however that he would revert to his former nationality. But this is gratuitous, true only in one case, when the former State has declined in the first instance to let him go. But it is certain that his former State, having once let him go, would not receive him back unless he fulfilled the conditions required by its law for re-patriation.

Does not concern itself with the consequences abroad.

There is here to be noticed one point which is too apt to be overlooked. Naturalization involves something more than a mere document declaratory of the fact that a certain person has been received into the new allegiance: the oath of that new allegiance has been taken ; and the argument that the certificate does not make the holder of it a British subject outside the United Kingdom overlooks the fact that there is in the oath itself no such limitation, and also that there is no provision for release from its obligation. But this tells with twofold force when we consider the argument in its relation to foreign countries. What if

The fact that the oath of alegiance has been taken seems to be ignored

the law of the former State recognizes the expatriation of its subjects by the mere fact of their taking the oath of allegiance to a foreign Sovereign? Even by English law, as we shall presently see, certain consequences attach to a person who takes the oath of allegiance to a foreign Sovereign, although he does not become naturalized in the State.

[*see* Chapter X—"Expatriation".]

The argument is *ab inconvenienti* it is true, but it is none the less the fact that the narrowest possible construction does overlook the consequences entirely: and these consequences result, not merely from the grant of a limited certificate, but also from the taking of an unlimited oath of allegiance. It is at least legitimate to urge that if this view is sound, the result of the Act is to add to rather than to decrease the number of those who have no nationality. The States which release too quickly give rise to as many difficulties as those which refuse to release at all.

Consequences of narrow construction.

Even yet the difficulties are not exhausted, for the words "in the United Kingdom" are also used in the first paragraph of s. 7, in connection with the condition of residence which is fundamental to the grant of the certificate: and it cannot be denied that the condition of residence furnishes an argument which makes strongly in favour of the narrow construction. The law insists on residence in the United Kingdom as the condition on which the certificate will be granted: that being so, it may be said to be only natural that the rights which the certificate carries with it should also be limited to the United Kingdom.

Residence fundamental to grant of certificate.

But without contemplating the extreme case of a prolonged absence from the United Kingdom, the narrowest possible construction must involve the same result every time the holder of a certificate of naturalization crosses the Channel. The exact point to which this construction is to be pressed has never, so far as I am aware, been fully stated. The only authoritative statement which we have is in an official circular, where it is laid down that the words "in the United Kingdom" indicate the limits of the effect of the grant: and in this there is nothing said as to whether the absence which will destroy the privilege during such absence is to be of a prolonged nature, or whether a temporary absence is to have the same effect.

Argument must apply to case of temporary absence.

There appears to be also lacking an authoritative definition of residence. The consequences which are involved in the case of crossing the Channel can hardly have been intended: and it is

Absence of definition of 'residence.'

suggested that, even in the absence of such a definition the Courts might possibly hold that "residence" was used in a colloquial sense : or they might interpret it as synonymous with the expression " usual residence " to be found in some laws. Some of the most uncomfortable consequences of this narrowest construction would then disappear.

A possible interpretation suggested.

One further argument in favour of the narrow construction is to be derived from the changes which were introduced by the Act of 1870 in the then-existing law. In the first place " residence in the United Kingdom " has been substituted for the condition of the Act of 1844, which only required on the part of the alien an " intent to settle " in any part of Great Britain or Ireland : and in the second place, the rights granted by the Act of 1844 were defined to be " all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit ", subject to the exceptions with which we are now familiar. Although the exceptions have been done away with, and to this extent the privileges granted have been widened, yet the other changes are limitative : for settling in a country is consistent with temporary, and even prolonged absences from it and might almost be interpreted to mean acquisition of domicil : and the words " in the United Kingdom " in connection with the rights are so used as to contract the area of their enjoyment, there being no argument by which their natural sense can be evaded.

Condition of residence supports the narrow construction.

Argument that since residence is compulsory rights should be limited to United Kingdom.

The argument against the narrow construction which appears to be the most formidable is that it gives no meaning to the second part of the provision, in which some kind of recognition of the naturalized person's status as British subject in foreign countries is in fact contemplated.

Narrow construction omits second part of s. 7.

It may be that what the Legislature had chiefly in view was the right of diplomatic protection abroad : for, as we shall see, the only official documents in which the question is considered deal with the question from that aspect. But even then, if the intention were, as it would appear from these documents, that the naturalized subject should have no right of protection as distinguished from protection as an act of grace) in any foreign country, this still deprives the words of the qualification of any meaning.

Diplomatic aspect of the question.

Perhaps the diplomatic aspect of the question may be thus stated in conjunction with the narrow construction. In the denial

of diplomatic protection abroad the law finds another practical method of enforcing the condition of residence which it has made essential, but which it will not punish by withdrawal of the certificate. This may be put in the following way—You, *A.B.*, an alien, have been received an Englishman on the express condition and promise of residence : there is no provision made for the protection of your rights when abroad, because *ex hypothesi* you will remain in England.

Necessity for diplomatic protection during temporary absence.

Yet even here that question of temporary absence from the United Kingdom recurs to emphasize the hardship of the law as thus interpreted ; for it often happens that the casual visitor abroad is more in want of diplomatic protection than the permanent resident. It is much to be regretted from all points of view that there is no authority establishing exactly the limits of this narrow construction : the only case on the subject is *re Bourgeoise*, to be referred to presently : but the case was decided on another point, and the naturalization question was not determined.

[L.R. 41 Ch. D. 310.]

Cause of obscurity of s. 7.

The meaning of s. 7 will thus be seen to be something more than obscure. I have endeavoured to state fully the arguments on both sides without reference to any opinion as to what the law ought to be. But one thing seems clearly to result—that the cause of the obscurity is traceable mainly to the fact that the draftsman ignored two things : one, that a British subject " in the United Kingdom " has rights and duties abroad : the other, that a British subject abroad has rights and duties " in the United Kingdom ".

Narrow construction makes British certificate of no effect in Colonies.

But there is a still more important consequence flowing from the twofold use of the words " in the United Kingdom ". It follows from what has been said that the certificate of naturalization granted in the United Kingdom is also of no effect in the British Colonies.

Circular of 1874. [*see* end of this chapter]

At this point we are met by an official document, a circular addressed in 1874 to the different Colonial Governments, containing an opinion of the then Law Officers to the effect

" that the operation of the Acts of 1844 and of 1870 is clearly confined to the United Kingdom, and that a certificate of naturalization, granted under either of the Acts of 1844 or 1870, confers upon an alien no rights or privileges in a British Colony ".

It will be seen from the terms of the opinion, that the Law

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Officers based themselves on the use of the words "in the United Kingdom", and it seems clear that they adopted the narrowest possible construction. But whatever construction of this paragraph is the correct one, there is nothing to warrant a larger effect being to the certificate in the Colonies than in foreign countries.

Circular of 1851. [*see* end of this chapter]

But in 1851 a circular was issued by the Secretary of State for Foreign Affairs, dealing with the effect of certificates beyond the United Kingdom in the opposite sense.

It appears that holders of certificates had claimed to receive from the British diplomatic and consular agents abroad the same degree of protection to which natural-born subjects are entitled. In order to put an end to this assumption a new clause was inserted in the certificate: thenceforward the rights and capacities of a natural-born subject were granted to the holder,

"except the capacity of being a member of the Privy Council, or a member of either House of Parliament, *and except any rights and capacities of a natural-born British subject out of and beyond the dominions of the British Crown, and the limits thereof.*"

Meaning of new clause in certificate.

The italics show the new clause, and it will be observed that it had a double reference: the positive — that the certificate did not confer any rights in foreign countries: the negative — that it did confer rights in the dominions; the rights, that is, which a natural-born British subject of the United Kingdom could enjoy or transmit in them, and this without limitation. According to the circular therefore, the certificate was to operate in the Colonies, and the opinion of the Law Officers in 1870 seems to be in direct contradiction to it.

Differences in the Acts as to certificate.

Two important differences in the two Acts with regard to the certificate have already been noticed: there is one other of equal importance: the very wide power which was given to the Secretary of State, enabling him at his pleasure to limit the effect of the certificate.

Power of Secretary of State in 1844.

7 & 8 Vict. c. 66, s. 6.

The words of the Act of 1844 are that the certificate shall not confer on the alien the rights

"of enjoying such other rights and capacities, if any, as shall be especially excepted in and by the certificate to be granted in manner hereinafter mentioned."

Bearing in mind the fact that the rights and capacities conferred on the alien (putting on one side the special exceptions) are those "which a natural-born subject of the United Kingdom

can enjoy or transmit", it seems difficult to contend that this did not include the rights which a natural-born subject possessed in the Colonies. The emphasis of the reference to the United Kingdom here, seems to be, to differentiate the natural-born subjects of the King born in the United Kingdom from those born in the Colonies. And this was probably the meaning of s. 3 of the Colonial Naturalization Act of 1847, which declared that the Act of 1844, and no part of it, extended to the Colonies. It seems difficult to give this section of the Act of 1844, the more rigourous construction that the rights granted were limited to those which a natural-born subject of the United Kingdom could enjoy or transmit *in the United Kingdom*. It would certainly appear that this construction was not put upon it by the legal advisers of the Secretary of State at the time, or the circular would not have been issued.

The words used do not admit of limitation.

10 & 11 Vict. c. 83, s. 3.

It is impossible, however, to conceal the fact that precisely the same argument holds good with regard to the rights and capacities of a natural-born subject of the United Kingdom in foreign countries. But it will be noticed that the circular did not profess to interpret the Act. The language used seems rather to admit that the Secretary of State had the power to grant even this extension of the privileges resulting from the certificate, but that he declined to exercise it : and, perhaps, that it was never intended that he should exercise it. The circular treats it as a special exception which it fell within his power to impose ; and therefore it must be assumed that, if he had not exercised his power to except them, the rights would have existed.

But the argument extends to foreign countries.

In view of the power given to the Secretary of State, the circular of 1851 had the effect, to all intents and purposes, of a statutory rule or order : and, with deference, it is difficult in the face of it to understand the reference in the Law Officers' opinion to the Act of 1844. If by any chance that question were to come up in the Courts, it is probable that the words of the certificate would prevail.

The circular equivalent to a statutory rule.

With regard to the Act of 1870, the condition as to the form of the certificate is different ; it is to be settled by regulations made by the Secretary of State [s.11 (2)]. But it is more than doubtful whether this gives the Secretary of State so extensive a power as he had under the Act of 1844. The general principle is that statutory regulations must fall within the four corners of

Powers of Secretary of State under Act of 1870, with regard to certificate more limited.

the statute under which they are made ; and that the authority authorised to make them has no legislative power beyond what is actually conferred upon him. Consequently the form of the certificate now can neither extend nor limit the law as laid down in s. 7.

Effect of Law Officers' opinion.

As to the meaning of the Act of 1870, the Law Officers in 1874 have given their opinion that the certificate has no effect in the Colonies : and as it is impossible to find any argument for giving the Colonies a more favoured treatment than foreign countries, the decision in the case of the Colonies will depend on whether the broad or the narrow construction of the paragraph of s. 7, which we have been considering, prevails.

In re Bourgeoise. [L. R. 41, Ch. D. 310.]

The questions considered in this chapter have been once, and once only I believe, under consideration in the English Courts : in the case of *in re Bourgeoise.*

Facts.

The facts were the following. In 1866, J. E. Bourgeoise, a Frenchman, came to reside in England ; and in 1871, having fulfilled the required five years of residence, he was granted a certificate of naturalization. He did not obtain any authority from the French Government, if such authority were required, which was in dispute. In 1880 he married an English lady, and having amassed a fortune in commerce he returned to France, where he resided till his death. By his will, in French form, he gave his residuary estate, which included considerable personalty in England, to his widow for life, with remainder to his two infant children, both born in France. The widow had continued to reside in France ; and on her death, a guardian to the infants was appointed by the French Courts. A summons was taken out for the appointment of an English guardian.

In the Court below the question involved was treated as being dependent on the nationality of M. Bourgeoise : and as he was in France, his former State, it was examined on the basis of the qualification in s. 7,

Certificate assumed to have full effect abroad : except in France.

The learned Judge made an elaborate enquiry into the law of France, and came to the conclusion that a Frenchman cannot abandon his status of French subject without permission : that therefore, no permission having been granted, the qualification came into operation : and that therefore again, when he died in France he was a French subject, that his children were also

French subjects, and that the Court had no jurisdiction to interfere.

Decision in Court of Appeal.

The Court of Appeal decided not to interfere on the ground that the children were born in France, and had been treated as French subjects by the French Courts: that guardians had already been appointed in France: and that there was therefore no necessity to discuss the effect of the certificate. Cotton L. J. referred incidentally to the question, and he undoubtedly did so on the basis that the certificate would have full effect abroad, save only in France if the French law declined to recognise his naturalization.

Kay J., in the Court below, after quoting the sub-section from the words "with this qualification", said

"those very words are repeated in the certificate of naturalization. Therefore it is not a certificate of naturalization to all intents and purposes, but practically it amounts to a certificate of naturalization so long, and so long only as the subject of it does not reside in his original country, France, unless by the law of France the certificate makes him cease to be a French subject to all intents and purposes."

And Cotton L. J., in the Court of Appeal, said

"there is a question raised here, what is the effect in France of this certificate of naturalization given under this Act of Parliament?"

Narrowest possible construction ignored.

Now clearly, if the narrow construction of s. 7 be the correct one, this question would have been disposed of at once; for, according to it, neither in France, nor elsewhere out of the United Kingdom, is the naturalized person considered a British subject. Therefore M. Bourgeoise would have been a Frenchman: his children French subjects in France: and therefore no question as to their guardianship could have arisen in England.

There can be little doubt that both in the Court below and in the Court of Appeal the narrow construction of s. 7 was ignored.

But the qualification in s. 7 itself raises a question of some difficulty.

Manner in which person may cease to be subject of his former State.

This qualification points out the two ways in which the naturalized alien may cease to be a subject of his former State. First, "in pursuance of the laws thereof": that is to say, *(a)*—either the fact of his having been naturalized, or even the fact of his having taken an oath of allegiance to a foreign Sovereign or State, may by law operate as an abandonment of his original nationality: or, *(b)*—he may be allowed, under such circumstances,

to complete his naturalization by performing some act equivalent to the English declaration of alienage. Or, secondly, it may be " in pursuance of a treaty to that effect ".

French law as to loss of nationality by naturalization.

There is no treaty with France: the question was, therefore, whether M. Bourgeoise had ceased to be a French subject in pursuance of French law.

The provision of the Civil Code is as follows :—

Art. 17. Perdent la qualité de Français :

1o. Le Français naturalisé à l'étranger ou celui qui acquiert sur sa demande la nationalité étrangère par l'effet de la loi.

S'il est encore soumis aux obligations du service militaire pour l'armée active, la naturalisation à l'étranger ne fera perdre la qualité de Français que si elle a été autorisée par le gouvernement Français.

* * * *

Now, so far as permission is concerned, it is a mere question of evidence whether it has been given or not. But with regard to the other condition, it may be assumed that when the law speaks of a Frenchman being naturalized abroad, it attributes to the naturalization the same effect as it gives to the naturalization of a foreigner in France: that is to say, that he acquires full civil rights. In order therefore to see whether a Frenchman naturalized in England falls under art. 17 of the Code, the question which Kay, J. considered arises: is the English certificate " absolute " or " qualified " ? This is putting the question already considered in another form : for obviously it means, does the status of " naturalized British subject " differ in any way from the status of " British subject " ?

see Civil Code, art. 8; p. 109.

Question whether certificate " absolute " or " qualified."

Effect of the qualification in s. 7, on the absolute nature of the certificate.

The qualification in s. 7 is one which only arises under certain conditions, and it is difficult to see how it can affect the general character of the certificate. But, with deference, it is hardly a fair test to examine, as Kay J. did, the abstract proposition by the light of its special application to the country where the limitation alone takes effect. It would be better tested by considering the effect of the qualification, should the question arise before its Courts, in a third country.

Question should be examined as if it arose in a third country.

Suppose that the law of Germany required as a condition for recognising naturalization, that the certificate should confer absolute nationality, this condition would naturally relate to the naturalization of German subjects, for the German law would not concern itself with the naturalization of the subjects of other States. But a German Court would have to consider whether the limitation, so far as the person's former State is concerned, did

render the certificate one of qualified and not absolute nationality.

It is suggested that the German Courts would hold that it was no more than a waiver of its effect out of deference to the laws of the person's former State, and could not affect the question of its absolute nature so far as other States are concerned. Indeed, the reading of Mr. Justice Kay's judgment shows into what a tangle the argument gets, when it is attempted to deduce from this special limitation the general proposition that the certificate is a qualified one. On the one hand the certificate is not absolute, because it is to have no effect in the person's former country if the laws of that country do not recognise it : on the other hand, the laws of that country will not recognise the certificate unless it is absolute. The argument becomes circular and no solution is possible.

Effect of the condition of residence.

But for the rest : what is the result of the examination into the nature and effect of the certificate at home ? The conditions resolve themselves into two. First, the condition of residence generally, and specially as regards the ownership of British ships. It might possibly be argued that these are both conditions which might be imposed even on British subjects, and that therefore that they do not go sufficiently to the root of the matter to warrant the finding that the certificate is " qualified." But the limitation of its effect to the United Kingdom is fundamental. It is hardly to be expected that a foreign Court will consider a person a British subject, if the law itself treats him as a subject only in the United Kingdom, and as an alien in the Colonies ; and this is precisely the same question which the English Courts may have to solve in cases such as that of M. Bourgeoise, but which have not the same loophole of escape from the necessity of considering it. Whether, therefore, the certificate satisfies the test of " absoluteness " required by the law of some States as the condition of recognition, depends on that other question, whether s. 7 is to receive the broad or the narrow construction which we have examined in the foregoing pages.

Effect of limitation to the United Kingdom.

Temporary nationality impossible.

One further point requires notice. This sentence occurs in the judgment of the learned Judge—" Supposing a Frenchman took out a certificate in this country giving him naturalization for a year—would that deprive him of his French nationality for

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ever ?." With great deference the query treats of an impossibility, for temporary certificates are not contemplated by the law.

Nationality of children of persons naturalized. [*cf.* p. 65.]

The nationality of the children of persons naturalized is dealt with by s. 10 (5) of the Act of 1870 : but the sub-section presumably refers only to children in being at the time of the naturalization of the father. The status of children born after naturalization must now be considered. If born within the dominions they are natural-born subjects in their own right. But if they are born abroad a difficult question arises as to whether they come within the statutes of George II and George III. This question was referred to in *re Bourgeoise* in the judgments in the Court of Appeal, as raising a doubtful point, but one which it was not necessary to decide in the case. Cotton L. J. however expressed the opinion that the nationality conferred by the statutes was "the privilege of the children and not of the father" : from which it would follow that the question does not depend on the construction of s. 7, because the exercise in the United Kingdom of any rights possessed by natural-born British subjects in the United Kingdom is not involved in the application of the statutes to the children. This however does not settle the point.

If born in United Kingdom subjects in their own right.

[L. R. 41, Ch. D. at p. 319.]

The statutes confer a privilege on the children.

The children born abroad are aliens unless the father is a natural-born British subject, when they come under 4 Geo. II, c. 21. This brings us back to the question whether an alien becomes a natural-born British subject by naturalization. He is a British subject : so much has been established—though with limited rights. The probability that " British subject " and " natural-born British subject " are identical has been suggested in an earlier chapter : and it is submitted, but with great diffidence, that the children whose nationality we are now discussing are to be deemed natural-born British subjects under the statute of George II.

[*cf.* p. 49.]

Children probably within statutes.

Question may be affected by father being abroad and consequently ceasing to be a subject.

But the question does now arise whether the nationality of the children may not be affected by the narrow construction put upon s. 7, if it is to prevail. The effect of the father's certificate is limited to the United Kingdom, and he will be an alien when he is abroad. Therefore, unless the father happens to be in the Kingdom when the child is born abroad, the condition of the statute that the father must be a natural-born subject at the time of the birth is not fulfilled, and the child would then be an alien. This seems inevitable, for though the privilege of the statute is

the child's, yet the enjoyment of it depends on whether a certain condition is fulfilled by the father.

The nationality conferred by the statute of George III is entirely derivative: and if the son of a naturalized subject is within the scope of the statute of George II, the son of such son, born abroad, will also be a natural-born British subject.

[L. R. 1903, 1 K. B. 444]

Subject of State in enmity cannot be naturalized.

[*see* Chapter X.]

It was laid down in *R.* v. *Lynch* that a British subject cannot become naturalized in a State at war with Great Britain. Presumably the converse holds good: a subject of such a State cannot be naturalized in Great Britain. The question will be more fully dealt with in the chapter on ex-patriation.

Sir A. Cockburn's criticism of naturalization prior to 1870.

Writing in 1869, presumably while the Act passed in the following year was in course of preparation, and while the recommendation of the Commissioners as to the position of naturalized aliens was still fresh in men's minds, Sir Alexander Cockburn reinforced that recommendation by drawing attention in most emphatic manner to the anomalous state of the law as it then stood.* In concluding this chapter the question naturally arises—Has the law been altered for the better since the Act of 1870 was passed? In one thing, yes. The restrictions of the old law which prevented the naturalized British subject from exercising the higher political rights have been removed. But on the other hand, if the narrow construction of s. 7 is to prevail, the Act has limited and not enlarged the rights conferred by naturalization. Variations of nationality arose as the person went from and returned to England: those variations are still the consequence of a holiday excursion to the Continent. In case of war he could then bear arms with impunity against the King:

The criticism still applies if the narrow interpretation of s. 7 is to prevail.

* "Thus restricted it is plain that the effect of naturalization in Great Britain is only to remove the legal disabilities of the alien, and to place him, as to certain minor political rights, on the same footing as the natural subject: and further, that the oath of allegiance taken by him amounts to no more than a promise of that allegiance which every alien while residing in the realm, is bound to render, and must be taken to carry with it the implied reservation, that it is to operate no longer than while the party remains within the Queen's dominions. When abroad he is no longer a subject. On his return to his own country, his nationality of origin, so far as this country is concerned, would revive, and, in case of war between the two countries, he might bear arms against Her Majesty without incurring, legally or morally, the guilt of treason. If the recommendation of the Commissioners that aliens shall be placed in respect of capacity for civil rights on the same footing as native subjects be adopted, this anomalous form of naturalization will become useless, and it is hoped will be discontinued".

["Naturalization" p. 116.]

he can do so still. The nationality of his children born abroad may depend on whether he is with the mother at the time of their birth, or in the United Kingdom. And with regard to all the rights, duties, and privileges devolving on British subjects in foreign countries, there is still nothing but the greatest uncertainty whether they also devolve on him.

But the change in the law is more far-reaching that at first appears. The law to which the Lord Chief Justice of England was referring was not the Act of 1844 as it stood upon the statute book, but the limitation put upon it by the Secretary of State in the exercise of the powers which the Act conferred upon him. Since 1851 the law was that contained in the Foreign Office circular of that year. Yet, even comparing the present law with that, there has been a contraction of the area in which the rights conferred on the naturalized may be exercised: for the narrower limits of the United Kingdom must now be substituted for the British Dominions in the circular. All the old inconveniences are therefore emphasised, for they lie outside a more contracted circle. But the law itself has narrowed in its operation. Under the

The real charge effected in 1870 is a restriction of the law.

NOTE.

The following are the Circular Despatches issued by the Foreign Office which are referred to in this Chapter.

(A).—*Despatch notifying insertion of new clause in naturalization certificates, limiting the rights conferred to the British Dominions.*

Foreign Office, January 8, 1851.

Cases having occurred in which the holders of certificates of naturalization, issued by the Secretary of State under the Act 7 & 8 Vict. cap. 66, have put forward claims to receive from Her Majesty's Diplomatic and Consular Agents abroad the same degree of protection to which the natural-born subjects of Her Majesty are entitled, I have to inform you that Her Majesty's Government have deemed it expedient to insert a new clause in the certificates in question, which are now drawn up as follows: – "I hereby grant to *(A.B.)* all the rights and "capacities of a natural-born British subject, except the capacity of be- "ing a member of the Privy Council, or a member of either House of "Parliament, and except any rights and capacities of a natural-born "British subject out of and beyond the dominions of the British Crown "and the limits thereof."

I transmit herewith, for your information and guidance, copies of the new form of certificates now in use, and of the Act 7 & 8 Vict. cap. 66; and I have to add that the holders of these new certificates are not entitled to demand British passports, nor to claim in foreign countries

Act of 1844, it would have been within the power of the Secretary of State to give to the certificate a larger area of operation, if the policy of the Government with regard to naturalization should change. The rigid limitations of the Act of 1870 have precluded that possibility now. The higher political privileges apart, the net result of the amendment of the law in 1870 can hardly be described as other than a step backwards.

NOTE giving Foreign Office Circular Despatches, *continued*.

British protection for mercantile firms abroad with which their houses of business in this country may be connected.

* The latter clause was, however, modified as to passports, in 1854, by the addition, after the words "limits thereof" of the words "other than such as may be conferred upon him by the grant of a passport from the Secretary of State to enable him to travel in foreign parts." * Cockburn "Nationality", p. 117.]

(B). —*Despatch containing Law Officers' opinion that naturalization certificates issued in the United Kingdom under the Act of 1870 confer no rights in the Colonies.*

Downing Street, 10th. September, 1874.

In consequence of an application made to this Office by a gentleman naturalized in 1873 in this country to be allowed the rights and privileges of a British subject in Gibraltar, the opinion of the Law Officers of the Crown has been taken as to whether certificates of naturalization granted in the United Kingdom extend to the Colonies.

2. The Act 7 and 8 Vict. (1844), c. 66, s. 6, provided that upon obtaining the certificate, and taking the oath therein mentioned, every alien then residing in, or who should thereafter come to reside in, any part of Great Britain or Ireland, should enjoy all the rights of a British subject. The Act 10 and 11 Vict. c. 83, s. 3, expressly enacted that the above Act of 1844 should not extend to the Colonies. The Act 33 Vict. (1870), c. 14, s. 7, enacted that an alien to whom a certificate of naturalization should be granted, should, in the United Kingdom, be entitled to all political and other rights, &c., of a British subject.

3. Her Majesty's Government are advised that the operation of the above enactments is clearly confined to the United Kingdom, and that a certificate of naturalization, granted under either of the Acts of 1844 or 1870, confers upon an alien no rights or privileges in a British Colony.

4. As this subject is one of general interest, and with a view to remove any doubts which may exist in the Colony under your government upon the point, I have thought it desirable that the state of the law should be made known in a circular despatch to all the Colonies.

Chapter IX.

Of the Recognition of Nationality and Naturalization.

Chapter IX

Consequences of naturalization in other countries.

In the last chapter the consequences of becoming a naturalized British subject were examined, so far as the United Kingdom is concerned. But this manifestly does not exhaust the consequences: and we must now proceed to examine what the consequences are so far as foreign countries are concerned: in other words, what is the effect of the British certificate abroad.

The possibility of such a question arising in a foreign country has already been indicated: the concrete case being whether, in the event of the question being raised in a foreign Court, the special qualification of s. 7, in favour of the naturalized person's former State, would be held of itself to make the certificate one of "qualified" nationality.

In the first place it must be borne in mind that what I have called the narrowest possible construction of the provisions of s. 7 which deal with the effect of the certificate, does not furnish the answer to this question: for although it emphasises the apparent limitation conveyed in the words "in the United Kingdom", yet it may be precisely this question—what effect the certificate has in the United Kingdom—which may arise in a foreign Court. To take a concrete case: suppose M. Bourgeoise to have actually been in England, on what principles would a foreign Court have solved the conflict between the English and the French laws—the English law claiming him as a naturalized subject, the French law claiming him as a subject who by law had no right to throw off his allegiance?

Different cases which may arise; [*see* p. 112.]

The different cases in which this question of recognition might arise were stated at the beginning of the last chapter: it will be convenient now to put them into tabular form.

EFFECT OF CERTIFICATE TO BE CONSIDERED	PERSON NATURALIZED RESIDENT
a — in United Kingdom or British dominions.	*aa* — in United Kingdom or British dominions
b — in the person's former country	*bb* — in his former country
c — in a third country	*cc* — in a third country

There are thus nine distinct cases which may arise, and the questions resulting from the different combinations differ somewhat in form. When the effect of the certificate is to be considered in the United Kingdom, or in the dominions, it is a question of construction of statute wherever the person may be, and the naturalizing law will prevail. When it is considered in the person's former country it is also a question of construction of law wherever he may be, and in this case the naturalizing law will only prevail if the national law allows it. When it is considered in a third country it is a question of recognition, in which a conflict between the naturalizing law and the national law may take a prominent part. This question of recognition lies somewhat outside the beaten tracks: it involves the decision by the Courts of a third country which of the laws of two other States which are in conflict, it will apply.

and nature of questions involved.

The recognition of naturalization is in reality included in the larger one, the recognition of nationality.

Recognition of nationality.

Nationality is a status: the recognition of nationality will therefore follow the principles of recognition of status generally. This question divides into two: the recognition of judgments of status, and the recognition of the laws of status. With regard to the former, it forms an important chapter in the law as to the recognition of foreign judgments, and it is only necessary for our present purpose to quote the well-known passage from the judgment of Brett L. J. in *Nibbyet* v. *Nibbyet*—

Nationality a status.

Recognition of judgments and of laws.

[L. R. 4 P. D. 1]

"A judgment on a question of status is a judgment *in rem*: it is therefore if binding at all, no only a binding judgment between the parties to the suit, but it is recognised as binding in all suits and between all parties. Such a judgment, when the jurisdiction of the Court which made it is recognised, is treated as binding and final, not only by the Courts of the same country, but by the Courts of all countries. It is binding, as it is usually said, against all the world."

In any case therefore, where the nationality of a person is in issue, and is directly the subject of a decision of an English Court, that decision, we may assume, will be recognised by all Courts abroad. In cases of double nationality however, the Courts of neither country would recognise a judgment given in the other based upon its own law: for interpretation of the law would probably in this case supersede any principle of recognition. The rule that "error in law" is no defence in an action on a foreign

Recognition by foreign Courts of English judgment.

judgment, even in the law of the country where the question of recognition arises, might also give rise to a difficulty ; for it may well be doubted whether this rule could be applied in the case of a judgment affecting the nationality of any person, even though he were a subject of another State.

The general principle of recognition of judgments deciding questions of nationality would specially apply to judgments on petitions under the Legitimacy Declaration Act, 1858, when the question of the nationality of the petitioner is expressly in issue, and is decided by the judgment.

Recognition of foreign laws affecting status.

Behind the question of recognising judgments of status however, there is the larger question of recognising the laws on which such judgments proceed : and it is this question which enters very largely into the recognition of nationality.

There can be little hesitation in accepting as a fundamental rule, that laws conferring status will receive as ample recognition as judgments which declare status : but this takes us at once into the regions of difficulty, when there is a conflict of laws of two States in respect of a man's nationality. What is the rule of recognition of a judgment, or of the law on which a judgment proceeds, in cases of double nationality, whether in connection with naturalization or nationality ?*

Cases of double nationality.

Dealing with nationality first, the difficulty will be appreciated if we take the simple case, and one which must be of frequent occurrence - a person born of French parents in England : that is to say, a person French by French law based on *jus sanguinis* : English by English law based on *jus soli*. Or the converse case which must occur, though not so commonly—a person born in the United States where the *jus soli* prevails, and therefore a subject of that country, but also English in virtue of the *jus sanguinis* introduced into English law by statute. It is diffi-

Conflict between *jus soli* and *jus sanguinis*.

*There is an important paragraph in the Report of the Inter-departmental Committee bearing on this question, which is as follows—

"It is frequently the case that a person who is a natural-born British subject—for instance, a person who is born in a foreign country but whose father was born in His Majesty's dominions, is also the subject of the foreign country. But the British Government does not regard such a person as entitled to protection against any obligation imposed by the law of the foreign country so long as he remains within the limits of that country. A naturalized person who is also a subject of a foreign State is for all practical purposes exactly in the same position, except that by the terms of the section referred to (s. 7), he is not while in the foreign country of which he remains a subject "deemed to be a British subject" at all. In the case supposed, neither the natural-born nor the naturalized British subject could be protected against military service while actually in the State which claims his allegiance."

cult to foresee or even suggest the solution. Perhaps, if the claim under the law based on the *jus soli* depended on the mere " accident of birth ", the Court called on to decide the question of nationality might take a broad view of the case, and decide in favour of nationality by parentage. Beyond this suggestion however it is not possible to go.

Many complicated cases may be imagined, but they lead us, even as in these two simple ones, into the region of conjecture, which is more suited to an essay than to a legal text-book. In this connection however it is impossible not to refer to the following dictum of Cotton L. J. in *re Bourgeoise*,— [L.R. 41 Ch. D. at p. 319.]

" They (the children) were born abroad (in France), and *prima facie* according to the laws of England, and I suppose according to the law of all civilised counfries, that makes them subjects of the French State ".

With the greatest respect, the learned Judge ignored the fact that the *jus soli* is far from being the universal rule among civilized States, but the contrary : and, in the instance, it is by no means clear that the French law would have claimed the children as subjects in the absence of other circumstances.

Recognition of national status resulting from naturalization.

Passing from the recognition of national status resulting from the law of nationality, we come to the recognition of that status resulting from the law of naturalization.

Former State not objecting, effect given to the law of the naturalizing State.

First, there is the simple case of the law of the former State acquiescing in, or not objecting to, the change in allegiance. Suppose the question of the nationality of a person naturalized in England under such circumstances to arise before a German Court. There being no conflict between the laws of the two States the only question for the Court would be—what effect, qualified or otherwise, does the English law attribute to its own certificate ?

If it is absolute, the German Court will treat it as absolute : if is limited, the Court would presuably, give effect to the limitations. It would probably follow the English law in all its details : that is to say, assuming the narrow construction to prevail, it would treat the person as a British subject in the United Kingdom, but as a subject of his former State in the British Colonies and abroad. And similarly as to colonial naturalization, it would treat it as strictly limited to the Colony in which the certificate was granted. How it would deal with those other questions which arise in consequence of this narrow construction, is as much a

[*see* p. 115.]

matter of conjecture as it is when they are considered at merely as questions likely to arise in the English Courts. The form of the question would not vary whether the person was in England, or in Germany, or in some third country. But when the former State does not acquiesce in the naturalization we come once more to the puzzles of double nationality.

Questions of double nationality arising before Court of a third country.

First, suppose the person to be in France. The German Court would examine, as Kay J. did, what the French law is. If it came to the same conclusion, namely, that a Frenchman could not lose his nationality by naturalization in a foreign country without permission, then the German Court would probably hold, as Kay J. did, that the qualification of s. 7 applied; and as he would not, under these circumstances, be claimed as an English subject by English law, the German Court would without doubt hold him to be a Frenchman.

Person in his former country.

Secondly, suppose the person to be in Germany or in any other country. Then he would be English by English law, and French by French law, and the conflict would have to be settled by the German Court: settled, be it observed, for all Courts, and for all purposes and all suits—with the exception of the English Courts, for they as before, would be bound to obey the statute, and as in the case already considered, would discard the rule of recognition of judgments which the comity of nations has established. The simple fact which the German Court would have before it would be this, that a person the subject of one country has naturalized himself in another country without complying with the law of the country to which he belonged. It seems more than probable that the German Court would hold that the law of the former nationality still prevailed, and would hold him still a subject of that State. As against England it might with justice be said, that there could be no ground of complaint, for "*nemo potest exuere patriam*" had been, prior to 1870, ingrained in the law of England from time immemorial.

Person in a third country

Person in his adopted country.

Lastly, suppose the person in the United Kingdom itself. It is submitted that although the apparent disregard of English law would be more marked in this case, yet the German Court could not but decide as before, and hold the nationality to be that of the former State. And here perhaps a broader principle would find warrant for the decision: for the nationality of the subject at his birth is the link which binds him to his Sovereign, and the

law of nationality is therefore one of the laws touching the sovereignty which other nations cannot infringe, or if they do, cannot expect that their infringing laws will be recognised. In the conflict between the law of nationality and the law of naturalization, I submit that the law which appertains to the former Sovereign must prevail. Chapter IX

Chapter X.

Of Expatriation : How British Nationality may be thrown off.

Chapter X

Expatriation is the converse of naturalization ; it signifies casting off the allegiance of birth and coming under a new allegiance in its place. There are two conditions inherent to it : the first, that both parts of this definition are essential and must be coincident. There is no such thing as the mere casting off allegiance : it must be preceded by the process of naturalization in another State. The second, that, certainly by English law, and probably by the law of most States, it is not a right, but depends on the permission of the law. It is in fact an express creation of law, and may therefore be more properly defined as the statutory recognition of the naturalization of subjects in foreign States, the law prescribing the conditions under which the new nationality will be admitted. These conditions vary in each State ; in some, the mere fulfilment of the provisions of the law of the new State is deemed sufficient ; in others, express permission to abandon the allegiance of birth is insisted on. But there are two other forms of expatriation recognised by the Act of 1870 : "declarations of alienage," which may be made by those who, subjects by parentage of another State, have been born on British soil, and so are natural-born subjects of the King : and secondly, "renunciations of allegiance" by those who have been naturalized in the United Kingdom, which may also be done by declaration of alienage. Each of these three cases is dealt with by a separate section of the Act, and is governed by different principles : the subject must therefore be divided into three heads—Expatriation, (*A*) by British subjects : (*B*) by natural-born British subjects : (*C*) by naturalized British subjects.

Meaning of expatriation.

Variation of conditions under which expatriation recognised.

Other forms : renunciation of allegiance : declarations of alienage.

Chapter X **A—*BY BRITISH SUBJECTS.***

Naturalization abroad, under and before the Act. Declarations of Nationality.

33 & 34 Vict. c. 14, s. 6.

Capacity of British subject to renounce allegiance to His Majesty.

A British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign State and not under any disability, voluntarily become naturalized in such State, shall from and after the time of his so having become naturalized in such foreign State, be deemed to have ceased to be a British subject and be regarded as an alien; provided,—

(1) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign State and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration herein-after refered to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign State in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect:

(2) A declaration of British nationality may be made, and the oath taken as follows: that is to say,—if the declarant be in the United Kingdom in the presence of a Justice of the Peace: if elsewhere in Her Majesty's dominions in the presence of any Judge of any Court of civil or criminal jurisdiction, of any Justice of the Peace, or of any other officer for the time being authorised by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

The fetters of nationality, forged irrevocably as they once were, could not have been more completely loosened: from extreme stringency the law has passed to extreme laxity. Before 1870 the rule was *nemo potest exuere patriam:* since 1870 allegiance may be renounced without permission. A British subject is free to go, so only that he go voluntarily, is not under any disability, and is in the foreign State at the time he accepts the new nationality. This condition of residence is one which the State into which the person is naturalized would itself probably insist on: but it is important in its negative aspect so far as England is concerned, for it precludes the possibility of a British subject becoming naturalized while he is in the United Kingdom, in the

Permission not required for expatriation.

First condition: he must be in the foreign State.

hope that he will evade some of the obligations of his citizenship. Chapter X
These conditions must now be examined.

Second condition: naturalization in foreign State must be voluntary.

"*Has voluntarily become naturalized*":—Some question has been raised as to the meaning of the word "voluntarily". It has been suggested that a State might impose its nationality by reason of mere residence, and that in such a case a person might lose his British nationality by a short sojourn in that State, and so involuntarily. If there is a State where such a law exists, it would seem to be for the Courts to determine, when the question arises, whether he went there voluntarily for the purpose of becoming a citizen of that State, or whether he went in ignorance of its law. The question would not be more difficult to decide than similar questions which arise in determining a man's domicil. Looked at as a case of double nationality, recognition is not likely to be accorded to nationality so arbitrarily imposed.

Expatriation of expatriated parents. [*cf.* p. 66.]

The subject of involuntary naturalization raises a difficult question in connection with the ex-patriation of children of ex-patriated British subjects, which has already been referred to. Under s. 10 (3) of the Act of 1870, the child of a father or of a widow who has become an alien in pursuance of the Act, and who has resided during infancy in the country where the father or mother is naturalized, *and who has, according to the laws of that country, become naturalized therein*, is deemed to be a subject of that State, and not a British subject. It would appear that the word "naturalized", when it refers to the parent, is governed by the previous sentence "who has become an alien in pursuance of this Act": that is to say, the naturalization in the foreign State must be that naturalization which, in accordance with s. 6, results in ex-patriation. The exact meaning of this provision with regard to the children is obscure: but it seems not unreasonable to suppose that the word "naturalized", when applied to the children, is to be interpreted in the same way as it is interpreted when it refers to the parent, and that, therefore, in the case of the children also their naturalization in the foreign State must be voluntary in order to induce ex-patriation. But then they would fall under the disability condition of s. 6, and this construction would reduce the provision to a nullity. The naturalization of the child in the foreign State may have occurred in one of two ways: either by way of derivation from the father, the law claim-

Involuntary naturalization of the children.

ing the children of persons naturalized as becoming naturalized also: or it may claim them as subjects directly, in consequence of their residence, as in the case supposed above. It would be more consistent if s. 10, (3) were interpreted so as to exclude from recognition this form of naturalization; but in view of the sentence " according to the laws of such country ", it seems probable that children held by the foreign law to be naturalized in consequence of the naturalization of their parent, would be deemed to be ex-patriated.

" *Not under any disability* " :—

33 & 34 Vict. c. 14, s. 17.

Disability is defined, by s. 17 of the Act, to " mean the status of being an infant, lunatic, idiot, or married woman ".

There are other forms of disability, such as persons under curatorship, and it is improbable that the definition would operate to exclude such persons from the consequences of disability.

Apart from the Act, disability means a general incapacity to perform acts which are legal, operative, or effective : but it varies with each class of persons, and with every category of act : each form again varying in every country.

So far as the construction of the section is concerned, it is not clear whether the disability is to be determined by the law of the naturalizing State, or by the law of England, the ex-patriating State : a question of some difficulty, for there is no specific act required to be performed in England, the section only dealing with ex-patriation as the consequence of an act performed abroad.

Now with regard to disability, it is natural that the question should be considered first as it regards the act to be performed. If a person is disabled from performing the act necessary to naturalization in the foreign State, he cannot do the act which is the condition precedent to his casting off his British nationality. Disability to become naturalized by the law of that State is therefore a bar to ex-patriation, because the only act contemplated by the section is an act to be performed in that State, and not in the United Kingdom. Yet it cannot be said that English law is entirely passive in the matter. It accepts the fact of the naturalization in the foreign State, and declares the consequence to be loss of British nationality. The act of naturalization, which is an act governed by foreign law, must therefore also be

a bar to ex-patriation.

regarded as the act of renunciation, performed abroad it is true, but none the less to be governed, if it is to be recognised, by English law; the disability to perform it must, therefore, also be judged by English law. English law has imposed a status on that person, and until that law considers him able to alter it, or alters it for him, the consequences of that status must cling to him.

Disability to act by English law a bar to renunciation.

The simplest case is that of married women. Now, if by the law of State *X*, married women cannot be naturalized, and if by the law of State *Y*, married women can ex-patriate themselves, that right would be of no avail so far as *X* is concerned, because no married woman could become a naturalized subject of *X*. On the other hand, if the law of *X* is that the nationality of a married woman is that of her husband, and the law of *Y* is that the nationality of a married woman is altogether distinct from that of her husband, there would be nothing to prevent a married woman of *X* becoming a subject of *Y* by naturalization; but that would not override the disability imposed by the law of *X*, and she would remain, so far as *X* was concerned, a subject of *X*. And further it does not seem improbable that the Courts of other countries would solve the problem of double nationality in favour of the State *X*.

Married women.

By the law of England [s. 10 of the Act of 1870], a married woman is deemed to be a subject of the State to which her husband is for the time being subject. It is clear, therefore, that the ex-patriation of a married woman, the wife of a British subject, is impossible.

Expatriation by married women impossible by English law.

The case of minors is more complicated.

Minors.

The birth-nationality of a child, whether under the common law or the statutes, is by English law personal to the child, and is not a dependent status as is the nationality of married women. As we have seen, however, s. 10 of the Act makes the child's nationality change with that of the father under certain conditions. But the question arising under that section is the naturalization or ex-patriation *of minors*: the question now under consideration is naturalization or ex-patriation *by minors*. Quite apart from its application to orphan minors, the question is supplementary to s. 10, for the question must often arise whether, if the conditions necessary to the acquisition by the child of his father's new

Nationality personal to the child.

[*cf.* pp. 65, 137.]

nationality are unfulfilled, it is possible for the child himself to follow his father, and by any act adopt the new allegiance?

Proceeding then to the consideration of the question raised by s. 6, naturalization by English minors in a foreign State, and its correlative ex-patriation, it will be seen to involve two points: the fact of minority, and the disability attached to minors.

Points involved: fact of minority, disability of minors.

The disability attached to minors must be considered both as regards the act of naturalization in the foreign State, and as regards the act of renunciation which that act of naturalization becomes by English law: in other words, the disability must be judged by the laws of both the States interested.

Disabilities to be considered in relation to both States.

So far as the act of naturalization is concerned the question is whether by the law of the foreign State a minor can become naturalized therein: so far as the act of renunciation is concerned, whether by the law of England a minor can throw off his allegiance.

English minors cannot perform act of renunciation.

The disability of the minor to do the act which would free him from his English allegiance must be the same as his disability to do any other binding act: and since his disability is general, it follows that English minors cannot effectively perform the act which is an act of renunciation of allegiance. Now, in order that there may be an effective ex-patriation, the two abilities must co-exist, and directly there is disability in one of the two interested States that act cannot be performed which has relation to that State. Therefore it follows that an English minor cannot expatriate himself. This solves in this case any difficulty which arises when the age of majority in the foreign country is less than it is in England. Presumably it also settles the question when the person is of full age in England but not of full age by the law of the other State, for the question appears to the same in both cases. As in fact it is: were it not for another difficulty which arises, and which it is all the more important to examine carefully, as the process of expatriation under English law requires no overt act in England.

For effective expatriation there must to ability to act by both laws.

Difficulties arising from difference in age of majority in two countries.

Minority of status.

[L. R. 13 App. Ca. at p. 437.]

Minority is a status; and status, with its attendant rights and disabilities, is governed, not by the law of the nationality, but by the law of the domicil *(Ab-dul-Messih* v. *Farra)*. The effect of this proposition *ought* to be to render impossible the assumption that a person can be major in one country and minor

in another. If the fact of minority were, like the fact of the disability arising from minority, to be determined by the law of either State according as the question arises within it, the different ages of majority in the two States would be an important factor. But as the law of the domicil determines the fact of majority or minority, and as a person cannot have two domicils, if the person is of full age by the law of his domicil, he is of full age in both countries : and therefore the fact that the age of majority varies in the two countries *should* be eliminated. To take a concrete case : a person domiciled in England is 22, and of full age to perform the act of renunciation. The rule of status requires him to be recognised as of full age in all other countries : therefore he *ought* to be able to become naturalized in a State where the age of majority is 25.

Theoretical aspect of the question :

Theoretically the case seems complete, but practically it is almost certain that he would not be allowed to become naturalized in the other State. This does not arise from the fact that the interpretation of the rule of status may be, like the interpretation of other common rules, variable in the two States, but probably because there is something wrong in the premiss of the argument.

of doubtful application in practice.

This error lies in the application of the rule of status, and not in the interpretation of it. Not that minority is not a status, or that the capacity to contract in any country will not be subject to the fact of minority or majority as ascertained by the law of the domicil, but that the rule is wholly inapplicable to the twofold act involved in ex-patriation.

Rule of status in applicable to act of ex-patriation.

It may well be asked whether a person who is on the point of changing his nationality, and, on the hypothesis, of changing his residence permanently, can retain his former domicil during the process, for the intention to reside continously in his former country has come to an end. If he has a domicil at all, it should rather be in his new country : though even here it is doubtful whether the severe tests of domicil would be satisfied. Until he has taken up his residence in that country, with full intention of permanent residence, it would seem rather as if his domicil was in a state of suspense, the circumstances creating an inevitable exception to the rule that every man must have a domicil. This may seem too violent a theory to adopt : but I

Domicil probably non-existent during process.

Chapter X

see no other way to account for the fact, which is indisputable, that the capacity to become naturalized in any country will, unless the law expressly allows minors to be naturalized, belong to persons of full age alone, and that the fact of full age will be decided by the law of the country into which the person intends to be naturalized.*

Capacity to become naturalized governed by the law of the State to which person is to become subject.

The disability of lunatics is exceedingly difficult to deal with, and it would require too elaborate an enquiry into the law of lunacy to attempt to settle the question whether a lunatic can become naturalized in a foreign State, and so cease to be a British subject. All that can be done is to indicate briefly some of the questions which would probably have to be considered. Seeing that lunacy no longer necessarily imports incapacity, the naturalization may still have been "voluntary" within the meaning of s. 6; and the question would be—was the insanity of such a character as to have prevented the insane person from knowing the nature and consequences of his becoming naturalized, at the time of his application. This would raise the subordinate questions whether it was done during a lucid interval: or whether insanity supervened between the application and the grant.

Lunatics.†

Indication of questions arising.

Question whether lunatic can "voluntarily" do what is necessary to become naturalized in foreign State.

The same question would arise in connection with a drunkard, drunkenness being a form of disability analogous to lunacy.

The same question arises as to drunkards.

It may be presumed that the incapacity of a lunatic to act will be governed by the same principles in both the naturalizing and the ex-patriating States. The question will however be simplified when there is a finding of lunacy; which, as it is a decision as to status, will be entitled to universal recognition: the finding being that of the properly constituted authority in either State, or in a third State. But the finding would have to be scrutinized with care, in order to ascertain whether it in fact covered the fundamental question whether the person to whom it applied did not know what he was doing: that it expressly imported incapacity to do this specific act. The lunatic may have been so found only as regards his estate: or it may be that his person was restrained by confinement in an asylum, no alteration in his status

Finding in lunacy will be recognised.

But finding must cover question of incapacity to act.

* Mr. Dicey has gone so exhaustively into the different theories advanced with regard to the rule of status, that I have not thought it necessary to travel over the same ground. As he points out the rule can hardly be said as yet to have settled into a rule of English law, though there is a manifest tendency towards its complete adoption. ["Conflict of Laws", Note 3: p. 727.]

†I am indebted for the materials of these paragraphs to Mr. Justice Wood Renton.

being involved: in which cases it is probable that his capacity to become "voluntarily" naturalized in another State would not be affected.

The conclusion seems to be that at the time the question arises for decision, the law of both countries will be taken into account, both as to the fact of disability, and as to the consequences arising from it. Disability by the law of either country will prevent expatriation.

Practical result to English minor becoming naturalized abroad.

This may be applied to the practical question which will present itself to an English minor desirous of becoming naturalized in a country where full age begins at, say, 18. The answer is, that although the formalities of naturalization in that country are fulfilled, yet the naturalization will be inoperative to destroy his English nationality—certainly in English Courts, and most probably in the Courts of any country. And so as to other disabilities.

Person under curatorship.

The foregoing argument is based on the general law as to disability: and if it is sound, it shows that the question would arise even though the condition were not inserted in the section, and, as has been already suggested, irrespective of the definition in s. 17. It would therefore apply to persons under curatorship, the curatelle being in all cases created either by law or by express decision.

Disability not mentioned in s.7.

In connection with this subject it is to be noticed that in s. 7, which deals with naturalization into the United Kingdom, the question of disability is not referred to: yet it is clear that a minor cannot be naturalized under the Act of 1870. It is suggested that this would be held to mean a minor by the law of England.

Retroactive, operation of s. 6.

Section 6 is retroactive, and recognises naturalizations already effected at the time of the passing of the Act. The Act of 1870, did not recognise nataralization into a foreign State, and ex-patriation was therefore unknown prior to 1870. Such naturalizations would, in virtue of the common law, have been inoperative, and would, therefore, have given rise in all cases to double nationality. But the retroactive provision was two-edged: on the one hand it sanctioned the ex-patriation of those who had really desired to cease to be British subjects: but on the other hand, without some modification, it would have treated as expatriated many who had never intended, by being naturalized abroad, to cast off their British allegiance. There were probably at the time the Act of 1870 was passed, many who had adopted for convenience a foreign nationality—convenience of residence, con-

venience of commerce: neither of which in some States is so free for foreigners as for subjects.

Naturalizations before the Act.

It can hardly be said that the law sanctioned this, for it certainly still asserted the common law maxim, and there was a provision in existence at the time with regard to the ownership of British ships, which would probably have been applied against them, the case arising. There is no explanation in the books what the actual position of affairs was; nor is there any authority dealing with the interesting question, what was the practical result of this *ex post facto* recognition of the hitherto unrecognised naturalization.

When it was decided to recognise naturalizations for the future, and when the logical consequence, the recognition of naturalizations in the past had also been decided on, it became necessary to provide for those who had not intended to cast themselves adrift from their British allegiance, which the law had compelled them to retain. Hence the proviso, that within two years after the passing of the Act, the foreign allegiance might be cast off by the simple means of a "declaration of British nationality". After that time their naturalization in a foreign State was to be given effect to, and they would be held to be its subject.

Declarations of British nationality.

Nevertheless, it seemed expedient that the same deference which it was the fundamental principle of the Act should be paid to the law of the person's former State in the case of foreigners naturalizing themselves in the United Kingdom, should also be paid in this case*: the same proviso was, therefore, attached to the resumption of British nationality by means of the declaration, as is attached to naturalization itself into the United Kingdom. If the person had not ceased to be a subject of the State into which he had been naturalized, he was not to be deemed, when within the limits of that State, to be a British subject.

Recognition of existing naturalizations made subject to law of foreign State when person within that State.

This did not completely remove the consequences of the double nationality which had in fact been created in spite of the English common law: for the foreign allegiance could only have been cast off so far as the United Kingdom was concerned. It remained unless, which is not probable, the foreign State recognised the "declaration of nationality" as equivalent to natu-

*This inverts the order of the provisions of the Act, as we are now dealing with s. 6, and naturalization is dealt with in s. 7. The arrangement of the sections of the Act is one of its most curious features: but it is suggested that the statement in the text is fully warranted, as it takes the Act as a whole, and the principles laid down with regard to naturalization as being the fundamental principles of the legislation.

ralization. The usual questions connected with double nationality would have resulted : though in this case there is a new element introduced by the fact, which must now be considered, that the original English nationality was held by English law never to have been lost.

Two years allowed after passing of Act for making declaration.

Although the time for making this declaration expired two years after the passing of the Act, yet there may still be some persons alive for whose benefit it was inserted : or, if they themselves are dead, it may still be of importance to their descendants to know whether in point of fact such a declaration was or was not made. The evidence required to prove the fact of its having been made, and the oath of allegiance taken, is indicated in the second clause of the proviso. But when we come to the effect of the declaration, it is necessary to see what the consequence of the limitation is, and to compare it with the limitation imposed by the law on the effect of certificates of naturalization.

But question may still be important.

Now, it will be observed that the words " shall be entitled in the United Kingdom ", which caused so much difficulty in s. 7, do not appear. There is simply the provision that when the person who has made the declaration is in the foreign State in which he has been naturalized he will not, under the circumstances specified, be considered to be a British subject. There can be no difficulty in interpreting these words. Nor are the words " in the United Kingdom " used, as they are used for the second time in s. 7, in connection with the rights acquired or obligations resulting from the declaration of nationality. The person who made it was simply "deemed to be and *to have been continually* a British subject ". Again there can be no difficulty in interpreting the words : the status of British subject was to be held never to have been interrupted.

Comparison between limitation as to certificates of naturalization and as to declarations of nationality.

These words were deliberately chosen to fit in with the then-expiring common law : the continuity of British nationality was held never to have been broken : and this idea was also carried out in the words used with regard to the person himself, who was described as being " desirous of *remaining* a British subject ".

Effect of limitation on persons still alive.

For such persons as are still alive this provision is still operative : but where the persons are dead, it has probably ceased to be of importance to determine whether or not they were British subjects ; for the circumstances under which there would have been a suspension of British nationality in spite of the decla-

Chapter X

Consequences when person dead.

When death occurred in State in which person was naturalized.

ration can no more arise, except in one case. If the person had died in the country in which he had been naturalized, then, if by the laws of that State he was still considered a subject, his British nationality would have been in suspense, and he would, even by English law, have been deemed at the time of his death, a subject of that State ; and the same decision would be arrived at any Court whose duty it was to review the circumstances, and pronounce what his nationality was. This hardly exhausts the question, for although his nationality at the time of his death is determined in this way, it does not follow as a matter of course that all questions of rights and obligations, whether of himself or of his descendants, would he determined according to that nationality. An enquiry into possible cases would lead us too far afield ; it must therefore be sufficient to have indicated what will be the basis of argument should such a question ever arise in the Courts.

No condition of residence attached to declaration.

No condition of residence was attached to the declaration, the second clause of the proviso expressly providing that it could be made before diplomatic or consular officers out of the dominions. This again is the logical consequence of the fundamental idea of the section, that if the declaration was made the British nationality had never ceased to exist.

Nationality of children of persons who made declarations of nationality.

This question of residence is of importance as regards the children born abroad, even during the period between the naturalization and the making of the declaration. The father being a natural-born subject, the children would have been entitled to the benefit of the statute of George II, and would also be British subjects. In this there is an important difference between the declaration of nationality and the certificate of naturalization. The children of such children would be British subjects under the statute of George III.

B—*BY BRITISH-BORN SUBJECTS.*

Declarations of Alienage.

Declaration of alienage.

Section 4 of the Act deals with a different class of persons, with a different order of ideas, and with a different process of expatriation. The marginal note is " How British born subject may cease to be such " : the witnessing document is called a " declaration of alienage ".

33 & 34 Vict. c. 14, s. 4. **Chapter X**

How British subject may cease to be such.

Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign State a subject of such State, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid [*i.e.* as provided in s. 3], and from and after the making of such declaration of alienage such person shall cease to be a British subject.

Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after making such declaration shall cease to be a British subject.

Section intended to give relief in cases of double nationality.

The declaration of alienage is intended to give relief in the cases of double nationality which result from the conflict between the *jus soli* and *jus sanguinis* : it may be said to be England's contribution to the settlement of the difficulties which result from her adherence to the former principle. The section deals with two classes of persons : those who are made British subjects compulsorily by the common law, on account of their birth in the United Kingdom : and those who are made British subjects compulsorily by statute, although they are born abroad.

Subjects by Common Law.

Relief from the operation of the Common Law.

Children of foreigners born in United Kingdom.

The class of cases aimed at in this part of the section are those where the accident of birth in the United Kingdom has made the children of foreigners natural-born British subjects. During their minority they are British subjects ; but they are allowed, when they come of age, to throw off this imposed nationality by making a declaration of alienage : after which time they cease to be British subjects.

Naturalization inapplicable.

There can be little doubt that the persons referred to could, if they so desired, cease to be British subjects by naturalization in a foreign State so far as English law is concerned. But, being also subjects of another State by parentage, the process of naturalization in that State would be impossible ; and therefore in order to enable the British nationality to be abandoned in an expeditious manner, the declaration of alienage has been substituted. The person making it must be "of full of age, and not under any disability."

Person making declaration not to be under disability.

Once more we come across the question of disability, though stated in a slightly fuller form than in s. 6, where the words used were simply " not under the disability ". This however is a mere

question of unequal drafting; the causes of disability, and the principles on which questions are to be decided, are precisely the same in both cases.

Married women.

As to married women: the birth-nationality of a married woman having by English law merged into the nationality of her husband, this section is inapplicable to them.

Minors.

As to minors: nationality being personal to the minor, and the law being express that the person making the declaration of alienage should be of full age, it seems probable that this section has in view merely the ability of the person to act by English law. The effect is, and probable intention was, to prevent persons who might by the law of their second nationality become majors before 21, from availing themselves of the declaration. There is then the converse case, where majority in the second State is fixed at an age beyond 21. It does not seem likely that the law should have concerned itself with the question whether the person is of full age in the other State: nor indeed does it matter, for no complication can arise, the hypothesis on which this part of the section rests being that the person is already a subject of that State. There is no act contemplated to be performed in that State, and nothing results from the act of declaration but the abandonment of one of two nationalities; the person making the declaration being free to act as he pleases. Where the age of majority in the foreign State is above 21, the consequence of making the declaration would be that the person ceases to be an Englishman of full age and becomes a foreign minor.

Cases where majority differs in the two countries.

Lunatics, and persons under curatorship.

As to the lunatics, drunkards, and persons under curatorship, it is not necessary to add anything to what had been said in the previous pages.

The manner of making the declaration of alienage is governed by the second paragraph of s. 3 of the Act, which will be set out in the next division of this chapter.

Subjects by statute.

Relief from the operation of the Statute Law.

Although in the second part of the section, there is no such express reference to the statutes as there is in the first part to the common law, there can be little doubt that this provision was intended to apply to those who are made British subjects by the statutes of Anne and George II; and it may be asked why, since this is an adoption by England of the *jus sanguinis*, any relief from its effect should have been thought necessary.

It will be seen that the two parts of the section are drafted differently. In the first part there is a statement of the causes which have brought about the double nationality : of the reason, that is to say, for the introduction of its provisions — the birth within the dominions, which has made the person a natural-born British subject : and the operation of a foreign law, in virtue of which he is also a subject of another State. There is therefore double nationality, and relief is given from its consequences ; so far as English law is concerned, the person affected may get rid of it altogether. But in the second part there is no such statement of the causes for the existence of double nationality : it simply runs—" any person who is born out of His Majesty's dominions of a father being a British subject...". Double nationality is not even hinted at as the reason for the enactment, and it may be that it has a much wider scope than at first sight appears to have been intended : this part of the section is indeed one of the most difficult provisions of the Act to understand.

Comparison between drafting of the two parts of s. 4.

Second part apparently not based on double nationality.

There are many complicated forms of double nationality arising under the statutes, the inevitable result of the *jus sanguinis* being tacked on to the *jus soli* in the same system of law : for the accident of a child of foreign parents being born in England not only makes a British subject of the child, but spreads its effect to the next generation by the operation of the statute of George II. The intention seems to have been to give the privilege of making a declaration of alienage to the second generation, in case the father had neglected to do so in his life-time under the first part of the section.

The first case therefore which falls under the second part of the section is that of the son born abroad of a father born of foreign parents in the United Kingdom. The father's double nationality results from the common law, but his son comes within the statute of George II, and he also has a double nationality, assuming that his father has not availed himself of the first part of the section. He himself may make the declaration of alienage under the second part.

Case of son born abroad of foreigner born in England :

But the grandson is also born " of a father being a British subject ", assuming as before that *his* father has not made the declaration. He falls within the statute of George III, being the son of a father to whom the statute of George II has given Bri-

case of grandson :

tish nationality. He therefore also has a double nationality, and may make the declaration of alienage.

case of great grandson.

But the children of persons made British subjects by the statute of George III are also born " of a father being a British subject " : but they, when they are born abroad, are not British subjects, and therefore it needs no declaration to make them alien. There seems to be in this a trace of faulty draftsmanship, which becomes more marked as we continue the analysis of the section.

Case of son of British parents born abroad having double nationality.

But there is another and entirely different case, also coming within the second part of s. 4, which is the converse of the case dealt with in the first part. The son of British parents born abroad in a country where the *jus soli* prevails, has also a double nationality : he is British under the statute of George II, and a subject of the other country by reason of birth within it. He therefore can make the declaration of alienage, and throw off his British nationality. There can be little doubt that the case falls within the section : but it is a deliberate departure from the principles of the statutes of Anne and George II ; for persons whom it was the express object of those statutes to invest with British nationality are now enabled to abandon it.

The extreme case is not one of double nationality at all. The section is so worded that it must apply to any person born abroad " of a father being a British subject ", irrespective of whether he has another nationality to fall back upon.

Extreme case of such son not having double nationality.

A person whose parents and whose parents' parents have been English-born through generations may, if by chance he was born abroad, reject the nationality which the statutes of Anne and George II have given him, and become... the sentence must stop, for the law has omitted to contemplate what will become of him after his ex-patriation.

The case is so improbable as perhaps not to be worth considering. But the statute is so drafted : and seeing that some do in fact what the heir of Locksley Hall threatened to do, it is necessary to draw attention to what I think must be faulty draftsmanship. As the section now stands this extreme case falls within its provisions, and it would have to be applied, the circumstances arising.

The difference between the two parts of the section becomes even more marked when we look at the forms provided in the

Instructions, the error of draftsmanship (assuming it to be an error) being perpetuated in a remarkable manner.

The title to the first form is "*Declaration of alienage by a person born within British Dominions*": and it runs thus.—

The difference between the two parts perpetuated in the forms.

"I, *A. B.*, of being held by the common law of Great Britian to be a natural-born subject of His Britannic Majesty by reason of my having been born within His Majesty's dominions, and being also held by the law of *C. D.* to have been at my birth and to be still a subject [*or* citizen] of *C. D.* hereby renounce my nationality as a British subject and declared that it is my desire to be considered and treated as a subject [*or* citizen] of *C. D.*

But the form under the second part is not amplified in a similar manner. It is headed "*Declaration of alienage by a person who is by origin a British subject*", and is simply as follows—

"I *A. B.*, of having been born out of His Britannic Majesty's dominions of a father being a British subject, do hereby renounce my nationality as a British subject".

It might possibly be argued that this shows that the second part was deliberately drafted to cover all the cases above indicated.

C—*BY NATURALIZED BRITISH SUBJECTS.*

The renunciation of allegiance by naturalized subjects by means of a declaration of alienage is dealt with by s. 3.

Declarations of alienage by naturalized subjects.

33 & 34 Vict. c. 14, s. 3.

Power of naturalized aliens to divest themselves of their statue in certain cases.

Where Her Majesty has entered into a convention with any foreign State to the effect that the subjects or citizens of that State who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty by Order in Counoil, to declare that such convention has been entered into by Her Majesty: and from and after the date of such Order in Council, any person being originally a subject or citizen of the State referred to in such Order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the State to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows: that is to say,—If the declarant be within the United Kingdom in the presence of any Justice of the Peace, If elsewhere in Her Majesty's dominions in the presence of any Judge of any Court of civil or criminal jurisdiction, of any Justice of the Peace, or of any other officer for the time being authorised by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

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This section is somewhat confusing. It deals with the cases in which naturalized aliens may divest themselves of their status, and at first sight appears to create a distinction in the matter of throwing off allegiance between natural-born subjects and naturalized subjects. From the way in which the section is drafted it would seem that once an alien has become a naturalized British subject, his right of ex-patriation, at least so far as his former State is concerned, is made subject to the existence of a convention. This confusion arises partly from the position of the section in the Act: for it deals with the resumption of the national status of naturalized aliens before the right of aliens to become naturalized is established: and it refers to the declaration of alienage before that means of ex-patriation is dealt with as it affects natural-born subjects with double nationality, for whose benefit the declaration was devised.

Right of ex-patriation by declaration does not deprive naturalized subjects of right of naturalization.

The object of the section is however quite different: it extends rather than contracts the privileges of naturalized subjects, for it gives them the right of ex-patriation by declaration of alienage in lieu of naturalization, should they desire to revert to their former nationality. But the section does not interfere in any way with naturalization under s. 7, which, it is presumed, may be resorted to by naturalized subjects as by all other subjects.

But right is dependent convention.

This right however depends on the existence of a convention with the person's former State. It is therefore regarded as a privilege: as indeed it is, the formalities attendant on naturalization being dispensed with. At present the only convention entered into is the one with the United States of 13th. May 1870, with the supplementary convention of 23rd. February 1871, which will be considered in a subsequent chapter.

D—*THE CONSEQUENCES OF EX-PATRIATION.*

33 & 34 Vict. c. 14, s. 15.

Saving of allegiance prior to ex-patriation.

Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

This section is drawn in general terms; it relates to both forms of ex-patriation, and to all who avail themselves of the privilege: that is, to British subjects, British-born subjects, and naturalized aliens, and whether they become aliens by naturalization or by declaration of alienage.

Consequences of ex-patriation.

The section enunciates what is in fact a general principle, that liability for any given act can only be determined as at the time the act was committed. Although, so far as it contains any direction, the provision can only operate with respect to English Courts, yet it is more than probable that a foreign Court, if the question arose before it, would judge of the liability on this general principle.

Section does not affect procedure to enforce liability.

The fact of liability is however only dealt with, and not with the method of enforcing that liability. After ex-patriation the newly made alien would in all probability be resident in his new country : the procedure of Order XI, as to service of writs out of the jurisdiction would then have to be resorted to. One of the results of ex-patriation would be a change of domicil, and it might well be that those rules would prevent action being brought in the English Courts.

"Saving of allegiance",

The marginal note to the section is "saving of allegiance prior to ex-patriation", and it may well be asked whether it was intended to do more than emphasize the fact that the general principle is not affected by the Act. But if the allegiance and all its consequences are "saved", it would appear that the intention was that the new alien should remain liable for all acts done before ex-patriation as if he were still a British subject. Civil liability depends so seldom on nationality by English law that the question may be ignored so far as it is concerned. But, assuming that liability includes criminal as well as civil liability, the proposition is hardly tenable ; for it would mean that a person naturalized into a foreign country, and therefore a subject of that country, is to be still treated as a British subject with regard to his former criminal acts. He could be tried if arrested in England, but extradition would be refused unless the treaty allowed subjects to be extradited. In the extradition treaty with France this is expressly stipulated.

The question dealt with by Ex-patriation Treaties.—

with France. 1870 : art. 2 :

Native-born or naturalized subjects of either country are excepted from extradition. In the case, however, of a person who, since the commission of the crime or offence of which he is accused, or for which he has been convicted, has become naturalized in the country whence the surrender is sought, such naturalization shall not prevent the pursuit, arrest and extradition of such person, in conformity with the stipulations of the present Treaty.

But in the treaty with Germany, and in many other countries, the corresponding article which prevents the extradition of subjects does not contain a similar exception.

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with Germany, 1872: art. 3.

No German shall be delivered up by any of the Governments of the Empire to the Government of the United Kingdom; and no subject of the United Kingdom shall be delivered up by the Government thereof to any German Government.

In the treaty with Italy the extradition is allowed within five years of the naturalization.

with Italy: 1873: art. 2.

The Italian Goverment shall not deliver up any Italian to the United Kingdom; and no subject of the United Kingdom shall be delivered up by it to the Italian Government.

art. 3.

In any case where an individual convicted or accused shall have obtained naturalization in either of the two Contracting States after the commission of the crime, such naturalization shall not prevent the search for, arrest, and delivery of the individual. The extradition may, however, be refused if five years have elapsed from the concession of naturalization, and the individual has been domiciled, from the concession thereof, in the State to which the application is made.

Converse principle.

The converse of the general principle is also true: that is to say, that the person who has become an alien shall not acquire thereby any liability in respect of his former acts. This is expressly provided in s. 8 with regard to re-admission to British nationality: the person re-patriated resumes his position as a British subject, from the date of the re-admission, "but not in respect of any previous transaction". Had there been any express statement in s. 7, that from the date of the certificate of naturalization the alien assumes the status of British subject, the same sentence would probably have been inserted; though it is not clear why the word "transaction" is used, which would appear to leave the question open with regard to criminal acts. The broad rule may, therefore, be stated thus:—a change of nationality by any of the recognised means does not either absolve from any pre-existing liability, nor create any new liability, in respect of acts done before the change.

Same principle in s. 8 as to re-patriation.

General principle: no liability created by change of nationality.

We must now consider two questions connected with ex-patriation which lie outside the provisions of the Act.

NATURALIZATION INTO AN ENEMY STATE.

Nataralization in enemy State does not result in ex-patriation; but is high treason.

Naturalization into a foreign State in amity with Great Britain alone results in ex-patriation. If a person should become naturalized into a State at war with this country it will be an act of treason, and will be punished as such, the allegiance being held to be still subsisting.

This question was considered in the recent case of *R.* v. *Lynch*, where the prisoner took the oath of allegiance to, and was naturalized in, the South African Republic during the Boer war. [L.R. 1903, 1 K.B. 444.] It was not disputed that apart from the Act of 1870, naturalization in an enemy State would afford no defence to an indictment for high treason* for subsequent acts of warfare or in aid of warfare against the forces of the Crown; the King's Bench Division held that the permissive clauses of the Act had not altered the law. The argument was that s. 6 had given a general sanction to British subjects to become naturalized in foreign States, and that there was no limitation of that sanction. To this it was answered—

"The section is not dealing with the circumstances under which naturalization may be legal or may be illegal, but with the consequences of the naturalization. It assumes throughout that naturalization did exist, and was not in itself unlawful, and then it says that where naturalization has taken place or may take place it shall have certain consequences. It does not make naturalization more legal or more illegal than it was before" (Channell J.)

The question may be viewed as one of disability, and therefore as not falling within the provisions of the section recognizing naturalization in a foreign State.

Authorities on the question.

In the argument of the Attorney General many authorities were quoted on the law irrespective of the Act. In some the rule was based on the proposition that the King's subjects cannot trade with an alien enemy without the King's license. The analogy does not seem to be thoroughly satisfactory, more especially in view of the exception. In others the question was treated on its own merits, and as an obvious principle.

"Now it is an obvious principle that an act of illegality can never be construed into an act of emigration or ex-patriation. At that rate treason and emigration, or treason and ex-patriation, would be in certain cases be synonymous terms. The cause of removal must be lawful: otherwise the emigrant acts contrary to his duty, and is justly charged with a crime" [Paterson, J—*Talbot* v. *Janson*.] [3 Dallas Rep. U.S. 133.]

NATURALIZATION INTO A STATE WHERE FOREIGN JURISDICTION EXISTS.

I have suggested in another work that naturalization into a

*See the case of *Fitch* v. *Weber* referred to on p. 157 :

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State in which the King exercises foreign jurisdiction will probably not be recognised : that is, that it will not give rise to ex-patriation.†

Naturalization in State where foreign jurisdiction exists does not result in ex-patriation.

The subject is a difficult and complicated one, and it is not possible here to do more than state briefly the nature of the question involved. By the grant of privileges of exterritoriality the foreign Sovereign has parted with certain sovereign rights with regard to the alien community whose establishment in his territory he has sanctioned. That community is subject to the jurisdiction of its own Legislature and its own Courts. It is probably not true to say that he has ceased to be the Sovereign of the country so far as the Treaty Ports are concerned ; but it is doubtful whether he can be said to have retained the naturalizing power as against the Sovereign with whom the exterritorial treaty has been entered into. The idea of a British subject becoming naturalized into such a State seems to be inconsistent with the principle of s. 6 of the Naturalization Act, which appears to contemplate the naturalization of a British subject into an independent State.

The question may be looked at in another way. No British subject can enter China, for example, without coming under British consular jurisdiction. The Foreign Jurisdiction Act therefore operates upon him immediately, and would prevent him from availing himself of the provisions of Naturalization Act.

This also might possibly be regarded as a disability under s. 6 of the Act.

Both cases arise from consent being unnecessary to ex-patria-

In both these cases the rule is the direct consequence of expatriation requiring no formal sanction. It is assumed in the authorities that express sanction might be given to naturalization under these circumstances, but it is not clear how such sanction could be given, except by Act of Parliament.*

MODIFIED EXPATRIATION.

Loss of certain Rights of Citizenship.

Apart from the provisions of the Act of 1870 which deal with naturalization in a foreign State, the consequences which result

† *See* " Exterritoriality " p. 156.

* See the quotation from Halleck's International Law, in the argument in *R.* v. *Lynch*, at p. 455.

from a British subject taking the oath of allegiance to a foreign Sovereign, irrespective of his becoming naturalized, must be considered. If the taking the oath is by the law of the foreign State equivalent and sufficient for naturalization, without other formality, that would result in ex-patriation under s. 6. But whether it amounts to complete naturalization in the foreign State or not, it is in some cases expressly provided by statute that taking the oath itself shall involve the loss of certain rights of citizenship. Thus, to revert once more to the ownership of British ships, there is the following proviso in s. 1 of the Merchant Shipping Act, 1894.

Consequences of taking oath of allegiance to foreign Sovereign without naturalization.

Provision in Merchant Shipping Act.

57 & 58 Vict. c. 60, s. 1.

Qualification for owning British ship.

A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships), namely,

(a) natural-born British subjects :

* * * *

provided that any person who...—

(i) being a natural-born British subject has taken the oath of allegiance to a foreign Sovereign or State or has otherwise become a citizen or subject of a foreign State :

* * * *

shall not be qualified to be owner of a British ship unless, after taking the said oath, or becoming a citizen or subject of a foreign State, ... he has taken the oath of allegiance to His Majesty the King, and is during the time he is owner of the ship either resident in His Majesty's dominions, or partner in a firm actually carrying on business in His Majesty's dominions.

It will be observed that the penalty imposed in this case is that the person never resumes his complete rights as a British subject with regard to owning ships, but is put in the same category as persons naturalized and denizens. Yet, not having been naturalized in the foreign State, he is in point of fact stil a natural-born British subject, and by his oath of allegiance to the King, may be presumed to have cancelled, so far as the King is concerned, his oath of allegiance to the foreign Sovereign.

Again in s. 44 of the Constitution of the Commonwealth of Australia, it is provided that—

Provision in Commonwealth of Australia Act ; [63 & 64 Vict. c. 12.]

any person who is under any acknowledgment of allegiance, obedience, or adherence to a foreign Power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign Power, shall be incapable of being chosen or of sitting as a Senator or a member of the House of Representatives.

and in Constitutions of Australian States.

This is a condensed form of a condition which is common to the Constitutions of all the Australian States. Thus in s. 29 of the Constitution of Western Australia,—the schedule to 53 & 54 Vict. c. 26—it is provided that the seat of any member of the Legislative Council or Legislative Assembly of the Colony shall become vacant if he—

> takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign Prince or Power, or does, concurs in, or adopts, any act whereby he may become a subject or citizen of any foreign State or Power, or whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or Power.

Different forms of adherence to foreign State.

Three things are thus contemplated as being possible—

a. naturalization in a foreign State ;

b. the acceptance of the rights of citizenship in a foreign State, without naturalization ;

c. the taking of the oath of allegiance to a foreign Sovereign, without naturalization.

This categorical statement of the three degrees of adhering to, or becoming a quasi-citizen of a foreign State, occurring as it does in an English statute, has an important bearing on an argument which has been advanced in connection with the consequences of naturalization in the United Kingdom, and which will again be referred to when we come to deal with colonial naturalization. For while naturalization involves both the acceptance of the rights of citizenship in a foreign State and the taking of the oath of allegiance to its Sovereign, the statute recognizes the possibility of either of the two component parts of naturalization existing separately.

[*see* the enquiry on p. 111, as to whether s. 7 makes the naturalized alien a subject.]

The provision of the Merchant Shipping Act, appears to be the only statutory consequence attached in the United Kingdom to any act which falls short of complete naturalization, and this relates *c*, but not to *b*. As the Naturalization Act only attaches the consequence of ex-patriation to complete naturalization, the person who commits either of the acts *b* or *c*, still remains a British subject. From which it follows that if the act constitutes an offence against the law of England he is still liable to punishment. Thus in *R.* v. *Lynch*, the oath of allegiance to the South African Republic which was then at war with England, was of itself held to be high treason. The acceptance of the rights of citizenship without the oath might possibly in this case be treated in the same manner.

Taking oath of allegiance to enemy State high treason.

[L.R. 1903, 1 K. B. 444; *cf.* p. 155.

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There is however a deeper question underlying this matter. Is not the provision which is embodied in the Australian Constitutions declaratory of the common law? The question may be put in another way: Does not the taking of the oath of allegiance to a foreign Sovereign cancel the oath of allegiance to the King? If so, then it would amount to a disqualification for any office the holder of which is required to take the oath of allegiance. From the note on the case of *Fitch* v. *Weber* in Sir A. Cockburn's "Nationality", it would appear that the abjuration of allegiance and promise of obedience to a foreign Sovereign might formerly have rendered a British subject liable to the penalty for high treason under 3 James I, c. 4, ss. 22, 23.* This supports in a certain measure the above suggestion. But on the other hand, prior to 1870, naturalization, and the taking of the oath of allegiance abroad, seem to have been tolerated. I have been unable to find any authority on the subject: and it is therefore only with diffidence that I suggest that membership of either House of Parliament is incompatible with the taking of an oath of allegiance to a foreign Sovereign.

Enquiry whether taking oath of allegiance to foreign Sovereign does not disqualify for holding office to which oath of allegiance attached.

[5 Hare 51.]

[p. 10.]

Chapter XI.

Of Repatriation: How British Nationality may be resumed.

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We are already familiar with the form of re-patriation known as the "declaration of nationality", which, in virtue of the proviso of s. 6, persons who had been naturalized prior to the passing of the Act of 1870, were allowed to make within two years of that date. The privilege accorded by that section was that of *remaining* a British subject, in spite of what was then only an imperfect ex-patriation. The privilege of *resuming* the position of British subject after a period of effective ex-patriation is granted by s. 8. In the words *remaining* and *resuming* there is

The two forms of re-patriation.

* This Act was for the better discovering and repressing popish recusants, and the two sections referred to punished as high treason the absolving, persuading, or withdrawing the King's subjects from their natural allegiance, or moving them to promise obedience to any pretended authority of the see of Rome, or any other Prince or State. The person absolved, persuaded, or withdrawn from his allegiance, or who promised such obedience, was also to be punished for high treason. The Act was repealed by 9 & 10 Vict. c. 59: the Religious Disabilities Act, 1846.

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an obvious link between the two subjects, which may help in the solution of some of the difficulties in interpreting this section.

33 & 34 Vict. c. 14, s. 8.

Certificate of re-admission to British nationality.

A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate (hereinafter referred to as a certificate of re-admission to British nationality) re-admitting him to the status of British subject. The said Secretary of State shall have the same discretion as to the giving or with-holding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of re-admission, but not in respect of any previous transaction, resume his position as a British subject: with this qualification, that within the limits of the foreign State of which he became subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign State according to the laws thereof, or in pursuance of a treaty to that effect.

Meaning of "statutory aliens."

The section introduces the expression "statutory aliens", and defines it to mean "natural-born British subjects who have become aliens in pursuance of the Act". The reason for the introduction of the definition requires consideration. Two questions are involved: who are included in the definition? and, what privilege is granted to them by the section? First then, who are the persons who "become aliens in pursuance of the Act"?

Persons naturalized in foreign country.

Clearly those are included who, by becoming naturalized in a foreign State under s. 6, have renounced their allegiance. It seems however doubtful whether a person making a declaration of alienage under the first part of s. 4, comes within this definition, for as he was at his birth a subject of two States, and therefore both subject and alien, he can hardly be said to have "become an alien". The point is not clear, for although it is probable that for all purposes of the dominions a person who has double nationality would be held by British Courts to be a British subject, yet there is no authority which establishes what nationality he would be held to have by those Courts when he is abroad, more especially when he is in the country of which he is a subject by parentage.*

Persons making declaration of alienage: *query*.

* Some light is thrown on the question by the extract from the Report of the Inter-departmental Committee given in the note on p. 132. That however only touches the diplomatic and not the legal aspect of the question.

Nor does the definition include naturalized aliens who have divested themselves of their status of British subject by declaration of alienage in virtue of a convention under s. 3, for a person naturalized is not a natural-born subject, though he is endowed with the rights of the natural-born. And for the same reason it would not apply to a person naturalized in United Kingdom, and afterwards naturalized in another State.

"Statutory alien" does not apply to naturalized aliens repatriated by convention:

Again, a woman loses her British nationality on marriage with a foreigner. It would therefore appear as if she would "become an alien in pursuance of the Act": but the reason why she cannot be regarded as a "statutory alien" has already been explained. The argument is reinforced by s. 10 (2), which is so drafted as to show that a distinction is intended to be drawn between "becoming an alien in pursuance of this Act", and "becoming an alien in consequence of her marriage": and the clause is in effect a provision that she does not become a "statutory alien" until widowhood. But this clause does not help us to understand the object of introducing the term "statutory alien", for the provision that she may "as such" obtain a certificate of re-admission to British nationality is either necessary or redundant: and if necessary the reference to the definition is useless.

nor to women who become aliens by marriage.

The only other persons who become aliens in pursuance of the Act, are the children of fathers or widows who themselves have become aliens in pursuance of the Act. These children are therefore the only other persons to whom the definition could apply: but even this is not clear, for the words of s. 8 are "and is in the Act *referred to* as a statutory alien". But the only reference in the other sections of the Act to a statutory alien is followed by a redundant explanation, and even in s. 10 (3) the parent of the children to whom the clause relates, are described by the long form as becoming aliens in pursuance of the Act.

As to children of ex-patriated parents: *query*.

Even a British subject who becomes naturalized in a foreign State is not *referred to* in s. 6 as a "statutory alien." The effect of his naturalization is said to be that he is to "be deemed to have ceased to be a British subject and be regarded as an alien". He is therefore an alien, and it was not necessary to invent a new expression in order to define his position. His rights and liabilities are those of an alien, to which the continued liability for acts committed prior to naturalization forms no real exception. Even if s. 8 had been omitted from the Act, there can be little doubt that ex-

Definition unnecessary for ex-patriated subject.

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patriated subjects would have shared with aliens the right of becoming naturalized: for the first paragraph of s. 6 ends with the statement that the British subject who has renounced his allegiance shall "be regarded as an alien", and s. 7, which gives the right of naturalization, begins with "an alien".

On the whole therefore it would appear as if the words "in this Act" were a slip for "in this section", and that the term "statutory alien" was introduced more for convenience of drafting the section, in which it is used three times, than for the purpose of introducing a statutory definition.

Although the result of this discussion is to show that the definition tends more to add to the confusion of the subject than to serve any practical purpose, yet it also leads to the conclusion that probably the only class of persons to whom the section applies are those natural-born British subjects who have become naturalized in a foreign State. The point is that although they would, without doubt, have the right of becoming naturalized irrespective of the section, the section gives them the right of resuming their former status of subject. It might perhaps have been thought that the sentiment which prompted this special privilege of re-admission to the fold, would have also provided some speedy method of effecting it. But re-patriation cannot be arrived at by any simpler process than naturalization, all the elaborate details of s. 7 being reproduced in s. 8.

Section probably only applies to subjects who have become naturalized abroad.

The conditions for re-patriation are therefore: residence in the United Kingdom or service under the Crown, for not less than five years, within a period of eight years, prior to the application, compled with an intention either to reside in the United Kingdom, or to serve under the Crown. The Secretary of State has further the absolute discretion to give or refuse the certificate. The remarks already made as to the construction to be put upon these conditions in the case of aliens apply equally to British subjects who have become aliens. The special qualification of s. 7 is reproduced; the certificate of re-admission is, like the certificate of naturalization, to have no effect in the State in which the British subject has become naturalized, unless he has ceased to be a subject either in pursuance of the laws thereof, or of a treaty to that effect.

Conditions for re-patriation.

The introduction of this qualification was inevitable, as the principle of recognition of the foreign law pervades the Act,

Even in the case of those who were naturalized prior to the Act, and who were, after declaring their British nationality, held never to have been other than British subjects, the qualification was introduced: it could hardly have been omitted in the case of those who resumed their nationality after naturalization expressly recognised by the Act. The result is, however, the creation of a class of natural-born British subjects who are liable to lose their nationality in a specified State. What has already been said as to the difficulties which may arise in the event of death in that country, in connection with the proviso to s. 6, applies also to this case. The taint of the ex-patriation, therefore, is never completely removed: but on the other hand, the consequences of naturalization being what they are, the privilege of resumption is great, for there is no limitation to the enjoyment of the rights "in the United Kingdom" to prevent him being a British subject throughout the Empire, and, save in that one country to which he once adhered, the world.

Qualification as to country in which person naturalized. Section creates a class of natural-born subjects with limited rights. [*cf.* p. 146.]

The Instructions to applicants for certificates of re-admission to British nationality are framed on the same lines as those for aliens applying for certificates of naturalization, except that the applicant is required to verify his former British nationality by a declaration that he was a natural-born British subject "by reason of having been born in British territory, or by reason of his or her father or grandfather, by the father's side, having been a British subject". This, it has been pointed out, is the nearest approach to a definition of British subject to be found: but it is not statutory. The applicant has further to state the mode in which he became an alien. This clause in the Instructions refers only to naturalization and to widows, thus bearing out the suggestion made above as to the meaning of the term "statutory alien".

Instructions to applicants. *cf.* p. 52.

The resumption of the position of British subject is limited by the words "but not in respect of any previous transaction". This has already been referred to in the last chapter.

The last paragraph of s. 8 deals with the powers of Governors of Colonies with regard to re-patriation: this subject will be considered in the chapter on colonial naturalization.

A curious point must be here noticed, which will be more fully considered when we come to deal with the United States conventions. By s. 3, foreigners who have become British subjects

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and who desire to renounce their naturalization may, when there is a convention, re-patriate themselves into their former State by means of a declaration of alienage. Corresponding powers are not taken in the Act on behalf of British subjects naturalized in the contracting State, and therefore they would have, in spite of the convention, to go through the process of re-admission to British nationality in all its details.

Re-patriation of British subjects in virtue of convention not provided for.

35 & 36 Vict. c. 39.

The Naturalization Act, 1872, confirming the Supplementary Convention was confined to s. 2, and sanctioned a departure from the procedure traced out by the Act with regard to the formalities necessary for making declarations of alienage: formalities required by the Act of 1870 to be performed before British officers. This Act of 1872 allowed the declarations to be made before officers of the United States; but it does not apply to declarations made under s. 3.

Chapter XII.

Of "Temporary Allegiance"; and of the Rights of Aliens in the Empire.

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The expression "temporary allegiance" has long since passed into current use. It is meant to indicate the legal position of an alien when within the realm, and to connote the assimilation in many, but not all respects, of his position with that of a subject also within the realm; but it is an obviously inaccurate expression; hardly even a convenient one. It serves no good purpose to use words which have a definite meaning in a sense which conveys no meaning. If "temporary allegiance" were the accurate term for defining the position of an alien in the kingdom, the alien from whom such allegiance is due would also be accurately described as a "temporary subject": and it would then follow that while he was so temporarily subject, he would be entitled to the statutory rights specially conferred on subjects: an impossibility on the face of it. Allegiance is the term specially applicable to the relation of a subject to his Sovereign. The correlative of allegiance is protection: and the expression is supposed to find its justification in the facts that the protection of the Sovereign is accorded to an alien while he is in the country, and that obedience to the laws is required of him. But the position of an alien is not

Meaning of "temporary allegiance".

Misuse of the word "allegiance".

completely assimilated to that of a subject. If there were any common law rights or duties consequent on allegiance in its ordinary meaning, such for example, as military service, it is hardly doubtful that they would not apply to an alien temporarily within the realm; and moreover there are certain statutory differences in his position to be presently examined. The more correct expression is that the foreigner while present in the realm, is "within the ligeance of the Crown"; it is used in the earliest statutes dealing with nationality, and occasionally also in judgments of the Courts.

We have to enquire what are the rights and duties of aliens when they are within the ligeance.

Position of resident aliens the same as that of subjects unless express provision to the contrary.

The fundamental principle is that unless there is an express provision to the contrary, either by common law or statute, their position is the same as that of subjects. What are those express provisions to the contrary will be examined in this chapter.

But rights may exist within the ligeance, though their possessor be beyond.

Position of aliens irrespective of residence.

A difficult question arises as to the position of aliens abroad under statutes conferring rights exercisable in the United Kingdom, when the aliens have fulfilled the statutory conditions on which those rights depend. This will be considered in a subsequent chapter: but it may here be noted that the decisions start with the principle that aliens within the kingdom are as a rule in the same position as subjects, and are entitled to the same rights unless there is an express limitation.

Even this does not complete the statement of the relations in which aliens stand to the Empire: for the law imposes many duties, and creates some privileges, on the high sea and abroad, and in a limited measure aliens come within the purview of them This subject will be dealt with in the chapters on extra-territorial legislation.

The justification for the introduction of these subjects is in the Act of 1870 itself; it is called the Naturalization Act, but it professes to be an Act "to amend the law relating to the legal condition of aliens and British subjects"*. The 2nd. to the 5th. sections are grouped under the sectional title *"Status of aliens in the United Kingdom"*: of these, ss. 3 and 4 have already been

Provisions in Act of 1870 with to aliens.

* The full title of Sir Alexander Cockburn's essay is "Nationality: or the Law relating to Subjects and Aliens". The detailed examination of the position of aliens is so mixed up with that of subjects, as to form an integral part of the question.

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considered : s. 2 deals with the capacity of aliens with regard to property : s. 5 does away with the jury *de mediatate linguæ*; and finally, at the end of the Act, s. 14 saves the provisions of the Merchant Shipping Act which operate to prevent aliens from owning shares in British ships. The provisions of the Act of 1870 must first be examined.

33 & 34 Vict. c. 14, s. 2.

Capacity of an alien as to property.

Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject : and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject : Provided,—

(*i*) That this section shall not confer any right on an alien to hold real property out of the United Kingdom, and shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise :

(*ii*) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him :

(*iii*) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act.

id. s. 5.

Alien not entitle to jury *de mediatate linguæ*.

From and after the passing of this Act, an alien shall not be entitled to be tried by a jury *de mediatate linguæ*, but shall be triable in the same manner as if he were a natural-born subject.

id. s. 14.

Saving as to British ships.

Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

Rights as to property.

The right conferred on aliens by s. 2 extends to both real and personal property of every description, and is irrespective of residence in the United Kingdom : there does not seem, however, to have been any personalty which could not have been held by an alien previous to the Act.

[L.R.9 P.D. 130.]

The full extent of the right was discussed in *Bloxam* v. *Fabre*. The argument put forward was shortly this : that as the section gave to aliens a right to dispose of, as well as to hold realty, " in the same manner *in all respects* as a natural-born British subject ", therefore an alien could avail himself of the privilege accorded to British subjects by Lord Kingsdown's Act—24 & 25 Vict. c. 114—of making wills abroad either by the *lex loci*, or by

the law of the domicil, or by the law of that part of the dominions in which the testator had his domicil of origin. This very special right of the subject was held not to have been included in the grant to aliens of the right to dispose of real property.

No rights under the Wills Act, 1861.

The Court of Appeal adopted the following statement of the law by Sir James Hannen—

"I am of opinion that the words "disposed of in the same manner in all respects as by a natural-born British subject" do include a disposition by will, but that in determining what is a valid will of an alien the general principles of law laid down by the Privy Council and House of Lords must still be applied."

Cotton L. J. stated the law concisely thus:—

"The object of the Act of 1870 was to remove the disabilities of aliens with regard to real property. According to the common law they could acquire property in England by purchase, but could not hold it against the Crown. The present Act enables them to hold it against the Crown, and to dispose of it. The words "in the same manner in all respects as by a natural-born British subject" occasion some difficulty; but looking at the object of the Act, I think we ought not to construe them as intended to confer upon aliens particular privileges given by a former statute to British subjects".*

Meaning of the provisoes to s. 2.

Having granted exceptional rights, the section then proceeds to hedge them in which provisoes, which for the most part, be it said with deference to the draftsman, seem to deal with imaginary difficulties. It seems hardly necessary to have enacted that the section conferred no right on aliens to hold realty out of the United Kingdom. It is probable that the proviso had colonial lands in view; but the statute did not apply and was not extended to the Colonies; it was purely territorial in its operation, and it is difficult to see how the conferring of the right to hold realty in the United Kingdom, could possibly be construed into an interference with the powers of the legislative authorities of the Colonies to legislate for land within their own jurisdiction. The proviso omits personalty.

No right to hold lands *out of* United Kingdom.

Parliamentary franchise not possessed by aliens by common law.

The second part of the first proviso may be justified on the draftsman's principle of "greater safety". It is the only text which refers to the disqualification of aliens for the parliamentary franchise. But this depends on the common law, whereas the

* In the chapter on extra-territorial legislation another argument in support of the decision will be given, which it would be premature at the present moment to consider.

qualifications are created by the electoral statutes. The contention which the proviso appears to have been designed to meet was probably, that as aliens were allowed to become freeholders they have now the necessary qualification for the franchise. But for a long time aliens had been allowed to be tenants of houses, and they have never exercised the occupation franchise. There is nothing in the Act which could in any way be pressed into an argument that, by granting to aliens the right to hold realty, it had disturbed either the common or the statute law as to the franchise. The common law went and goes further, as it does not allow aliens to sit in Parliament.

Municipal franchise.

The non-existence of the municipal franchise now depends in England on the Municipal Corporations Act, 1882; s. 9 of which is as follows—

45 & 46 Vict. c 50, s. 9.

(1) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.

(2) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows :—

* * * * *

(3) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(*a*) is an alien ;

* * * * *

Incapacity to be Councillor.

By s. 11 a person is not qualified to be elected or to be a councillor unless he is lawfully enrolled as a burgess.

It is clear that this express provision could not have been disturbed by the grant of the right to aliens to hold land. Nor could the grant as to land have given any right to hold office.

Meaning of second proviso.

The second proviso is to the effect that the section " shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property " as are expressly given to him by the section. This is the proviso of of " greatest safety ", but it is deceptive. The section does not confer greater rights than it professes to confer ; but on the other hand, the proviso cannot be construed to mean that the alien has no other rights in the United Kingdom than those which are conferred on him in respect of property by the section, which might appear at first sight to be its meaning. It is well established, for example, that the right to personalty existed at common law long before the Act of 1870 was passed.

The effect of the third proviso is to forestall the argument that the section had a retroactive effect, and safeguards the

interests of persons who had acquired rights to property, by disposition or devolution of law, prior to the passing of the Act, which were in any way dependent on the fact that aliens could not hold realty, and which they would not have acquired if aliens could have held such property.

Shares in British ships.

The saving as to the ownership of British ships in s. 14 might well have been made a fourth proviso to this section, as in s. 3 of the Canadian Naturalization Act. It cannot be looked on as declaratory of the existence or non-existence of any right, but is merely what its marginal note explains it to be, a saving clause. It should be expanded thus: "Nothing in this Act shall be held to give an alien any qualification to be the owner of a British ship which he does not now otherwise possess, or in any way to affect the provisions of the Merchant Shipping Act," *i.e.* the Act of 1854. The real purport of s. 14 is probably to settle any question which might arise as to whether, in spite of the Merchant Shipping Act, a ship came within the words of s. 2, "real and personal property of every description."

cf. p. 257.

The law as to ownership of British ships now depends on s. 1 of the Merchant Shipping Act of 1894. This section has already been printed in a dissected form on several occasions: it will now be convenient to set it out in full.

57 & 58 Vict. c. 60. s. 1.

Qualification for owning British ship.

Merchant Shipping Act.

A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships), namely,

(*a*) natural-born subjects:

(*b*) persons naturalized by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or Ordinance of the proper legislative authority in a British possession:

(*c*) persons made denizens by letters of denization: and

(*d*) bodies corporate established under and subject to the laws of some part of Her Majesty's dominions, and having their principal place of business in those dominions:

Provided that any person who either—

(*i*) being a natural-born British subject has taken the oath of allegiance to a foreign Sovereign or State or has otherwise become a citizen or subject of a foreign State: or

(*ii*) has been naturalized or made a denizen as aforesaid:

shall not be qualified to be the owner of a British ship unless, after taking the said oath, or becoming a citizen or subject of a foreign State, or on or after being naturalized or made denizen as aforesaid, he has taken the oath of allegiance to His Majesty the King, and is during the time he is owner of the

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ship either resident in His Majesty's Dominions, or partner in a firm actually carrying on business in His Majesty's Dominions.

Application of section to cases of double nationality.

The law seems so easy to state that it will appear strange even to suggest that difficulties may arise in applying it. It is, however, necessary to ascertain what is the exact position of aliens with regard to the ownership of British ships.

From time immemorial, the broad principle of the law has been to exclude aliens from the right to hold British ships. But when the occasion arose for putting this principle into statutory language, the draftsman must have been puzzled which of the two expressions to use—"British ships shall be owned only by British subjects," or "British ships shall not be owned by aliens"—for neither deals clearly with persons who fall under the ban of "double nationality."

It is evident that the mere statement of the difficulty which this twofold status involves is itself attended with difficulty; for while this term "British subject" evidently implies "British subject by British law," it is more than doubtful whether, under the circumstances of double nationality, the term "alien" implies "the subject of another country by the law of that country." It probably should be construed to mean a person who is "not a British subject by British law." Expressions used in an Act of Parliament must be construed according to British law, and it would therefore seem, on the face of it, to be immaterial which form of statement was adopted, for persons with two nationalities—one British, one foreign—would in the eye of the law be British subjects and not aliens: the law not regarding the fact of double nationality. Yet the intention of the old principle governing the tenure of British ships was clearly to exclude persons who are in spirit and in fact aliens. The following cases require special examination.

Examination of special cases.

First, persons born abroad who are British subjects by statute. If they are born in a country where nationality is governed by the *lex soli*, they are subjects of that country as well as British subjects. But they fall clearly within the spirit of the old principle, and should not be excluded from the right to own British ships.

Secondly, persons of foreign descent, born within the dominions. They are British subjects by British law, and fall within the words of the Merchant Shipping Act, yet they

are aliens in every sense except the legal. It cannot have been the meaning of the old principle that they should be entitled to hold shares in, or for that matter the whole of, a British ship. Rather they fall within this principle if it could be stated in the form "no alien shall own a British ship."

The third case is even more at variance with the spirit of the old law, for the children of such foreigners, though born abroad, and the children of such children, though born abroad, are also British subjects under the statutes; and they also come within the words of the Merchant Shipping Act.

The case of persons who have two nationalities does not seem to have been specially considered by the framers of the Act. The only words which might possibly be construed as having reference to them are those in the proviso which relate to persons who have "otherwise *become*" subjects of a foreign State. It does not seem possible to apply these words to a person who *is* at the time of his birth a subject of a foreign State. Such a construction would exclude all British subjects who have a second nationality. The position is only one more example of the puzzles caused by double nationality.

Subjects naturalized abroad may own British ships.

The proviso of the section further deals specially with a certain class of aliens—natural-born British subjects who have been naturalized in a foreign State.

It will be convenient, as before, to print the provisions applicable to them separately. Omitting the reference to cases of "modified expatriation," which have already been dealt with, the proviso runs as follows :—

cf. p. 157.

> Provided that any person who . . . —
>
> (*i*) being a natural-born British subject has . . . become a citizen or subject of a foreign State:
>
> * * * * * *
>
> shall not be qualified to be the owner of a British ship unless, after . . . becoming a citizen or subject of a foreign State, . . . he has taken the oath of allegiance to His Majesty the King, and is during the time he is owner of the ship either resident in His Majesty's dominions, or partner in a firm actually carrying on business in His Majesty's dominions.

There cannot be any doubt upon two points; first, that the only recognised way by which a British subject can become a subject of another State is by naturalization into that State; secondly, that the result of such naturalization is, in the words of s. 6 of the Naturalization Act, that the person is to "be

deemed to have ceased to be a British subject, and be regarded as an alien." The result is, that, subject to the fulfilment of certain conditions—the taking the oath of allegiance to the King (which of itself does not remake him a subject of the King) and residing in the dominions, or being a partner in a firm carrying on business in the dominions—this category of aliens may be owners of British ships.

Whether this derogation from a time-honoured rule was intended in 1894, is a question which I refrain from discussing; but it is permissible to suggest that there has been a repetition of the provisions of the Merchant Shipping Act of 1854 without full consideration of the consequences. At that time there was no such thing as expatriation, and it may well be that under those circumstances the tenure of British ships by persons who, though they had become subjects of a foreign State, yet remained British subjects, might have been sanctioned. The only other possible construction of this sentence of the proviso is that the words "become a citizen or subject of a foreign State" are surplusage, the words "being a natural-born British subject" having a continuing intention; but then the case to which the sentence refers could not arise.

Bodies corporate with foreign members.

The proviso does not limit in any way paragraph (*d*) of the section, which relates to bodies corporate. If, therefore, there is no restriction by the laws of that part of the dominions in which the body corporate is established, against aliens being members of such bodies, they can in this way become joint owners of British ships. Under the English Companies Act there is nothing to prevent a body corporate registered under the Act from being composed entirely of foreigners. It will be observed that the company in question need not have its principal place of business in that part of the dominions in which it is registered.

Firms with foreign partners.

So far as firms are concerned, their right to hold British ships as a firm must depend on whether each of the partners is qualified to hold. The position of alien partners is sufficiently indicated in the section.

These questions are not without importance in colonies where many foreigners are trading, in view of the provisions of the section which have reference to the dominions, for "British ship" includes ships registered in the colonies.

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Passing from the special provisions of s. 2 of the Naturalization Act, which illustrate the negative aspect of the principle, we must now revert to the general principle itself in order to understand more completely the position of aliens in the kingdom. The best-known illustration of the general assimilation of the rights of resident aliens to those of resident subjects is their free access to the Courts; and when they are within the jurisdiction no security for costs is required from them.* Even when they are out of the jurisdiction they have the same access; but a difference is made between the alien and the subject, security for costs being required when the alien is not possessed of real property within the kingdom.

Right of access to the Courts.

The positive side of the question, so far as legislation is concerned, is best illustrated by a small group of statutes which confer on resident aliens certain professional privileges. These will be grouped together at the end of this chapter. The general principle of assimilation is recognised in the Patents Act, 1882, which grants the right to apply for a patent to "any person whether a British subject or not" [s. 3]; residence within the kingdom is not made a condition in either case.

Patents Act; 50 & 51 Vict. c. 28, s. 3.

The Territorial Waters Act, 1878, also expressly declares that it applies to offences committed "by a person, whether he is or is not a subject of His Majesty", on the open sea within the territorial waters, although committed on board or by means of a foreign ship. Proceedings for the trial of a foreigner cannot however be instituted except with the consent of a Secretary of State, and on his certificate that the institution of such proceedings is in his opinion expedient. In the case of the territorial waters of a Colony the consent and certificate are required from the Governor.

Territorial Waters Act: 41 & 42 Vict. c. 73, s. 2.

By the Juries Act 1870, passed a few months after the Naturalization Act, aliens were declared liable to serve on juries after having been domiciled ten years in England or Wales.

Liability of aliens to serve on juries.

33 & 34 Vict. c. 77, s. 8.—

Aliens having been domiciled in England or Wales for ten years or upwards, if in other respects duly qualified, shall be qualified and shall be liable to serve on juries or inquests in England and Wales as if

* In commercial treaties a provision is usually inserted providing for free access to the Tribunals of each Contracting Party for the resident subjects of the other. In the case of Great Britain this right exists independently of treaty; but it is not unusual for the clause to be inserted in treaties to which she is a party.

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they had been natural-born subjects of the Queen: but, save as aforesaid, no man not being a natural-born subject of the Queen shall be qualified to serve on juries or inquests in any Court or on any occasion whatsoever.

The only question which could arise on this section is whether "domiciled" is used in its strict legal sense, or as synonymous with residence. Naturalized subjects are of course included in the term "natural-born subject" in this section.

Registration of aliens on arrival in United Kingdom: 6 & 7 Will. IV, c. 11.

By the Registration of Aliens Act, 1836, certain duties are laid on masters of vessels arriving in the United Kingdom, with regard to declaring what aliens are on board: and aliens on arrival are required to show to the chief officer of Customs at the port of debarkation, any passport which may be in their possession, and make sundry other declarations which are to be transmitted to the Secretary of State. Certificates are to be de-livered to aliens on landing, which are also to be transmitted to the Secretary of State on departure. By s. 11 the Act is not to affect foreign Ministers or their servants:

Exception.

nor any alien who shall have been continually residing within this realm for three years next before the passing of this Act, or who shall hereafter at any time complete such residence of three years, and who shall have obtained from one of His Majesty's Principal Secretaries of State, or from the Chief Secretary of Ireland, a certificate thereof: nor any alien, in respect of an act done or omitted to be done, who shall be under the age of fourteen years at the time when such act was so done or omitted to be done: Provided always, that if any question shall arise whether any person alleged to be an alien, and to be subject to the said provisions of this Act, is an alien or not, or is or is not subject to the said provisions or any of them, the proof that such person is, or by law is to be deemed to be, a natural-born subject of His Majesty, or a denizen of this kingdom, or a naturalized subject, or that such person, if an alien, is not subject to the provisions of this Act or any of them, by reason of any exception contained in this Act or otherwise, shall lie on the person so alleged to be an alien and to be subject to the provisions of this Act.

I believe that this exhausts the special legislation applicable to aliens.

General summary as to effect of the statutes.

The statutes just referred to expressly relating to aliens, together with those which refer expressly to subjects, form the obvious exception to the broad statement that an alien in the kingdom is subject to its laws. It is clear that he is only subject to the laws which are applicable to him. But legislation, more especially criminal legislation, is drafted in general terms; the formula is "any person who—". This naturally applies to "any person" within the area of the law's application at the time of

commission of the act : it therefore includes resident aliens. The general obedience to the law, which is one of the elements of the alien's " temporary allegiance ", owes its origin entirely the general nature of the laws themselves, and resolves itself into obedience to the laws applicable to him. And the "protection of the Sovereign ", the other element, may, for precisely the same reason, be expanded into "protection by the law of his rights, and redress of his grievances ". The alien is not subject to the law of the land because is resident : but, being resident, he is subject to so much of that law as is applicable to him.

"Temporary allegiance" resolved into its elements.

The position of the alien in the Kingdom is therefore one simply of interpretation of statutes or of the rules of common law, as the case may be. But for this it was not necessary to invent any such phrase as " temporary allegiance ", unless something more was intended to be conveyed.

I have not given any examples of the way in which the principle in generally stated, but it is necessary to have one before us. I therefore take the following from the short judgment of Bramwell L. J. in *R.* v. *Keyn* :—

Example of form in which principle generally stated.

[L. R. 2 Ex. D. at p. 154.]

" As a rule, where the Sovereign has jurisdiction there is allegiance, permanent, as subject or citizen, or temporary, as being within the territory. In such case there is a corresponding duty of protection ".

What does this mean ? So far we have found that it means no more than interpretation of the rules of law. But there is a deeper question behind.

Is the resident alien entitled to the liberties of the subject ? This is a difficult question to answer. What authority is there for saying that aliens participate in those higher rights which, together form the charter of our liberties ? Can a resident alien base his rights in the kingdom on Magna Carta, or the Bill of Rights ? Do the Habeas Corpus Act and the Petition of Right Act give him the same privileges as a subject ? If there were any such broad principle of " allegiance " in any form, with its consequent "protection", the answer should be in the affirmative. But, in the case of ordinary legislation the principle on which it is applied to aliens in the kingdom is clear : and as all these higher rights are granted in statutory form, it is difficult to find any reason why the same rule of construction should not be applied to these statutes. It is not sufficient to assert that resident aliens come within the "freedom of the realm" ; some text of law must warrant it. But it

Does an alien participate in the higher rights and liberties of the subject ?

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is not to be found in any statute. It cannot be part of the common law; for the rules of the common law are as capable of definite expression as the rules of the statutes : and there were, and are still, some specially applicable to the resident alien, debarring him from the enjoyment of some of the privileges of the subject. So that, even in the case of the common law, the question still remains one of interpretation.

They are created by statutes, which must be interpreted by the ordinary rules.

When we come to consider the higher rights, the difficulty arises from the fact that these laws were the embodiment of grievances redressed between the subject and the Sovereign: and it was only natural that "the subject" should figure largely in the language in which the redress was claimed and granted. In Magna Carta the grant is "to all freemen of this our realm of these liberties following, to be kept in our kingdom of England for ever": and it is the freeman who shall not be imprisoned "but by lawful judgment of his peers, or by the law of the land". In the Petition of Rights many grievances were recited—that the subjects had inherited from divers laws this freedom, that they should not be taxed but by consent of Parliament: that "some of your Majesty's subjects" had been put to death by pretext of martial law: and others similar in nature. And the terms of the petition, which became a statute by the usual formality§, were—that no man be compelled to give loans: that no freeman be imprisoned: that your people may not be so burdened : that there should be no more commissions, lest by colour of them " any of your Majesty's subjects " be destroyed or put to death, contrary to the laws and franchise of the land: all which things had been demanded " for the further comfort and safety of your people."

The Great Charter of the Liberties of England: *confirmed*, 25 Edw. I.

The Petition of Rights: 3 Ch. I. c. 1

Again, in the Bill of Rights the declaration was that the late King James II had endeavoured to subvert " the laws and liberties of this Kingdom " by, among other things, " causing several good subjects, being protestants, to be disarmed" : and by excessive bail being required of persons committed in criminal cases, "to elude the benefit of the laws made for the liberty of the subjects". And the Bill itself, which became law, asserted, as among the undoubted and ancient rights and liberties of the subjects, the right to petition the King, all commitments and prosecutions for such petitioning being illegal : and for "subjects

" An Act declaring the Rights and Liberties of the subject ": 1 W. & M. sess. 2, c. 2.

§ " Soit droit fait come est desire ".

which are protestants to have arms for their defence suitable to their conditions, and as allowed by law."

Can aliens to included in "Subjects" in these statutes?

The question whether it is possible in these charters to include resident aliens among "freemen", "subjects", or "your people", must be answered, that it is not more possible in these old statutes than in modern ones. Yet, unless that "allegiance", which they are supposed to owe to the Sovereign, carries with it this impossibility, the word is meaningless.†

But is it then true that the converse of these protestations of rights is the law for resident aliens? Does it follow that aliens may be imprisoned by other than lawful judgment: that aliens in the kingdom may be taxed without the consent of Parliament: that excessive bail may be demanded of them: that resident aliens have no right to petition the King, and that commitments and prosecutions for such petitioning are legal?

The converse propositions are untrue:

The statement of the converse propositions tends to show perhaps that the difficulty is shadowy, that it is almost academic: yet not quite. They are for the most part untrue, but for another reason: because the law of the Sovereign has in all practical matters given way to the law of Parliament. Except in matters of pure prerogative, aliens in the kingdom, like subjects, owe

† *NOTE.*

There was however a clause in Magna Carta protecting foreign merchants from impositions which was to the following effect:

All merchants, if they were not openly prohibited before, shall have their safe and sure conduct to depart out of England, to come into England, to tarry in, and go through England, as well by land as by water, to buy and sell without any manner of evil tolls, by the old and rightful customs, except in time of war; and if they be of a land making war against us, and be found in our realm at the beginning of the wars, they shall be attached without harm of body or goods, until it be known unto us, or our Chief Justice, how our merchants be entreated therein the land making war against us; and if our merchants be well intreated there, theirs shall be likewise with us.

And by a statute of 14 Richard II it was enacted—

That merchant strangers repairing into the realm of England shall be well and courteously and rightfully used and governed in the said realm, to the intent that they shall have the greater courage to repair into the same.

It might well be argued that in the words "rightfully used" lies the germ of that freedom which not merchant strangers only, but all aliens now enjoy in the British Empire. The practical nature of this freedom has been explained in the text: the historical aspect of it has been fully treated in Sir Alexander Cockburn's "Nationality": Chap. V—"Aliens".

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obedience to Parliament. That Acts of the Parliament now, like acts of the King in times past, are based on those old grants of liberties, must be admitted* : but it is to Acts of Parliament alone that the alien must look for his rights and duties. For him the Sovereign has no legislative existence ; and it is on this absorption of the kingly power by Parliament that the liberty, which the alien undoubtedly enjoys, depends. The King cannot tax aliens without the consent of Parliament, not in virtue of the Petition of Rights, but in virtue of the constitutional principle that the King has now no legislative power. So the King could not now sell to an alien, or deny or defer to any alien, justice or right, because he administers justice only through his Judges.

because Sovereign has no legislative existence.

The question was described above as being almost academic : but in the matter of petitioning the King it almost assumes a practical aspect.

[5 B & A. at p. 648.]

The common law has clothed this right with its qualified privilege [*per* Best J., in *Fairman* v. *Ives*]. Does that privilege extend to petitions by foreigners ? It is not unreasonable to suppose that the founders of the common law based themselves on the clause of the Bill of Rights, which was for them a living document. Perhaps the privilege does extend to such petitions ; but the question is not clear. But there is a previous question : Has an alien any right to petition the King while he is resident ? or, putting this in a practical form : Will such a petition be laid before the King ? A question which may be of practical importance to persons naturalized in the Colonies, who are aliens in the United Kingdom : but the answer to this is no clearer than to the former question.

Can an alien petition the King ?

Does the Petition of Right Act apply to aliens ? 23 & 24 Vict. c. 34.

This brings us down to a much more practical question : Does the Petition of Right Act, 1860, apply to aliens ?

Clode "Petition of Right", pp. 1, 35.

A petition of right has been defined to be " a petition presented by a subject to the Crown stating some infringement of the suppliant's legal rights by the Crown or its officers, and praying redress therefor " ; and a doubt has been expressed whether an alien can avail himself of this right to obtain redress of his grievances. In the old authorities it may be taken for granted

* The following case will illustrate my meaning. In Crown Colonies innumerable petitions on every conceivable subject are daily sent to the Governor. If a proposal were made to impose a stamp duty on these petitions, would it not be justly said that it would be an interference with the liberty of the subject : in other words, an attempt to check the right of the subject to petition ?

that "the subject" is always mentioned, for much the same reason as subjects are always referred to in the old charters we have just examined. Thus Staunford says

"that it is so called because of the right the subject hath against the King by the order of his laws to the thing he sueth for."

But the modern form in which the question must be put is as given above: Are resident aliens within the Act of 1860?

The preamble runs thus—

Whereas it is expedient to amend the law relating to petitions of right, to simplify the procedure therein, to make provision for the recovery of costs in such cases, and to assimilate the proceedings, as nearly as may be, to the course of practice in force in actions and suits between subject and subject.

Petitions of Right assimilated to proceedings between subject and subject.

The reference to proceedings "between subject and subject" occurs again in s. 7 and s. 12, and it might be argued that the meaning of the enactment should be stated thus: "proceedings between the subject and the Sovereign are to be assimilated in practice to proceedings between subject and subject". That this is the true meaning is made probable by the proviso to s. 7, which is as follows –

Provided always, that nothing in this statute shall be construed to give to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy before the passing of this Act.

This proviso is important, not merely on account of the inference to be derived from it, but also because it seems to make it clear that the statute was only passed to regulate the procedure with regard to what was a pre-existing right: and that therefore the statute must be read as incorporating the existing law as to who might present the petition.

If this is so, the better opinion would seem to be that an alien, even resident, has no such right: though it would leave him without redress against the Crown, under circumstances precisely similar to those in which the subject can obtain redress.

Right of naturalized subjects to petition.

Naturalized subjects would have the right to petition: but, in virtue of the narrow construction of s. 7 of the Act of 1870, not when they are out of the kingdom: and aliens naturalized in the Colonies would not have the right to sue their petition in the Courts of the United Kingdom. Whether they would have the right to do so in the Colonial Courts, raises difficult questions, which are settled in some Colonies by express legislation.

We come to the firmer ground of simple interpretation of a

statute when we examine the question whether a resident alien may have the benefit of the Habeas Corpus Act, 1678, but as to which there is, so far as I can ascertain, no decision, nor any authority or reference in the books.

Habeas Corpus Act: 31 Ch. II, c. 2.

The Habeas Corpus Act was passed "for the better securing the liberty of the subject". The preamble recites* that—

Preamble.

> Great delays have been used by sheriffs gaolers and other officers to whose custody any of the King's subjects have been committed for criminal or supposed criminal matters in making returns to writs of habeas corpus to them directed—whereby many of the King's subjects have been and hereafter may be long detained in prison in such cases where by law they are bailable, to their great charge and vexation.

The enactment is however said to be made "for the prevention thereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters": and the first section, which creates the privilege of the Act, provides that—

s. 1.

> Whensoever any person or persons shall bring any habeas corpus directed unto any sheriff or sheriffs gaoler minister or other person whatsoever for any person in his or their custody, the sheriff or other officer shall within three days after service thereof (unless the commitment were for treason or felony) bring the body of the party committed before the Court to which the writ is returnable and certify the true causes of the detainer or imprisonment.

The second part of the title, that the Act is also "for prevention of imprisonments beyond the seas", is taken up in s. 11: which provides that—

s. 11.

> No subject of this realm that now is or hereafter shall be an inhabitant or resiant of this kingdom of England shall or may be sent prisoner into any parts garrisons islands or places beyond the seas which are without the dominions of His Majesty: and that if any of the said subjects be so imprisoned he may maintain an action for false imprisonment.

The inception of the Fugitive Offenders Act is to be found in s. 15:—

s. 15.

> If any person or persons at any time resiant in this realm shall have committed any capital offence in Scotland or Ireland or any of the islands or foreign plantations of the King where he ought to be tried for such offence, such person or persons may be sent to such place there to receive such trial, in such manner as the same might have been used before the making of this Act.

Difficulties of construction of Habeas Corpus Act.

The Act must, it is suggested, be interpreted by the ordinary rules: that is to say, where the word "subject" is used, it must be construed strictly. But in spite of the special reference to subjects in the title and preamble, it would appear as if those

* The citations from this Act are given for convenience in a condensed form.

sections which commence with "any person" refer equally to resident foreigners as to subjects: and therefore the writ of habeas corpus would seem to be available for such foreigners, as by s. 1, it may be directed to the sheriff "for any person" in his custody. But s. 8 provides that "any person subject of this realm" committed to prison or in custody of any officer, for any criminal or supposed criminal matter, shall not be removed from such prison or custody, unless it be by habeas corpus or some other legal writ. And s. 11, which prevents imprisonment beyond the sea, is limited to "subjects of this realm inhabitant or resiant of this kingdom."

Other provisions of the Act.

Section 15 applies expressly to "persons at any time resiant in this realm", which includes those who are temporarily within the ligeance. The curious provision of s. 13, which enables persons convicted of felony to pray in open Court to be transported beyond the sea, is also drafted generally, and is applicable to "any person".

In spite of probable complications, it is difficult to see, should the question ever arise, how the sections which are actually limited to subjects, are to be otherwise construed.

An alien-born is alien throughout the Empire:

This chapter has been headed "Of the rights of aliens in the Empire": for, just as the law of British nationality extends to the dominions, and he who is a British subject natural-born in any part of the dominions, is a natural-born subject throughout the Empire, so also the alien-born is alien throughout the Empire.

but his rights may depend on colonial legislation.

The alien's rights however are not necessarily identical in all parts of the dominions, for the exercise of any of the rights which an alien might otherwise possess may, if it is not governed by some imperial statute, be regulated by colonial legislation, or by some different common law in force in any given Colony. Thus, the right of aliens to hold land under s. 2 of the Act of 1870, does not extend to the Colonies, but each Colony may legislate for itself. For example in New South Wales, s. 4 of the Act No. 21 of 1898, reproduces the English section. In Colonies where the common law prevails, in the absence of such express provision, an alien could not hold realty. In Mauritius the question was dealt with by Order in Council in 1842: but in Colonies where a different common law obtains, in the absence of express provision, the right would be governed by that law.

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So, in some Colonies the right of an alien to be tried by a jury *de mediatate linguæ* is expressly done away with : but at Aden it still remains. Further, there may be special legislation affecting aliens passed by the Colonies, such as the Chinese Immigration Acts of Australia.

Perhaps the most exceptional piece of legislation on the subject is s. 15 of the Constitution of South Australia, which allows persons " not being natural-born subjects " to be elected members of the Colonial Parliament after five years residence.†

Apart from special laws they are free to come and go. [*cf.* cl. 30 of Magna Carta, in note on p. 175.]

A part however from special legislation, it may be assumed that all aliens are free to depart out of the dominions, to come into the dominions, to tarry in and go through the dominions, as well by land as by water, to buy and sell without any manner of evil tolls by the old and rightful customs, except in time of war.

Such is the law of England irrespective of any arrangement by treaty. But as was pointed out in connection with the right of aliens to free access to British Courts of Law, it is not unusual for " freedom clauses " to be inserted in Treaties of Friendship and Commerce which are entered into between Great Britain and foreign Powers. These clauses cover freedom of residence, of exercise of civil rights, of acquisition and disposition of property, of access to the Courts for the prosecution and defence of their rights, under the same conditions as such freedom is enjoyed by British subjects, and *vice versa*. These treaties are usually extended to the Crown Colonies, so far as their laws permit; but a right of adherence is, as usual, given to the self-governing Possessions and Colonies.

Free rights of aliens often governed by treaties.

Example.

In order to complete this branch of the subject, I give by way of example two of the clauses which deal with these matters in the treaty with Uruguay of 1886.

4.—The subjects or citizens of each of the Contracting Parties shall be permitted to reside permanently or temporarily in the dominions or possessions of the other ; and to occupy and hire houses and warehouses for purposes of commerce, whether wholesale or retail. They shall also be at full liberty to exercise civil rights, and therefore, to acquire, possess, and dispose of every description of property, moveable and immo-

† So far as I have been able to ascertain this section is still in force : but even if it were repealed, it would serve as an illustration of the varied nature of colonial legislation with regard to aliens to which text refers. The Act of South Australia is No. 2 of 1855-56, confirmed by Order in Council, 24th. June, 1856. The marginal note to s. 16, is— " Aliens not eligible until after 5 years residence ".

"Freedom clauses" in treaty with Uruguay.

veable. They may acquire and transmit the same to others whether by purchases, sale, donation, exchange, marriage, testament, succession, *ab intestato*, and in any other manner under the same conditions as natives of the country. Their heirs and legal representatives may succeed to and take possession of it, either in person or by procurators, in the same manner and in the same legal forms as natives of the country.

In none of these respects shall they pay upon the value of such property any other or higher impost, duty, or charge than is payable by natives of the country. In every case the subjects or citizens of the Contracting Parties shall be permitted to export their property, or the proceeds thereof if sold, freely and without being subjected on such exportation to pay any duty different from that to which natives of the country are liable under similar circumstances.

5.—The dwellings, manufactories, warehouses, and shops of the subjects or citizens of each of the Contracting Parties in the dominions and possessions of the other, and all premises appertaining thereto destined for purposes of residence or commerce, shall be respected. Except under the conditions and with the forms prescribed by the laws for natives of the country, such dwellings and premises shall be exempt from search or domiciliary visit, and books, papers, or accounts shall be exempt from examination or inspection.

The subjects or citizens of each of the two Contracting Parties in the dominions and possessions of the other shall have free access to the Courts of Justice for the prosecution and defence of their rights, without other conditions, restrictions, or taxes beyond those imposed on natives of the country, and shall, like them, be at liberty to employ, in all causes, their advocates, attorneys, or agents from among the persons admitted to the exercise of those professions according to the laws of the country.

PROFESSIONAL RIGHTS OF ALIENS IN THE UNITED KINGDOM.

The professional rights of aliens in the United Kingdom, and the recognition of an alien's professional qualifications in the United Kingdom, form an important branch of the subject dealt with in this chapter.

General principle applicable to professional privileges of aliens.

It may I think be assumed, that the general principle established in connection with other rights and duties applies to the professions. It would apply in the following way:—

Practising and candidature.

(a)—There is nothing to debar an alien from practising any profession unless there is some express enactment to the contrary: and

(b)—There is nothing to debar an alien from becoming a candidate for a licence to practise any profession, if he can fulfil the conditions legally attached to the grant of the licence, or to the exercise of the profession.

These questions are in some cases regulated by statute, and they therefore fall naturally within the purview of this chap-

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ter. In other cases, either by immemorial and presumably legal custom, or by express charter granted by the Crown, these questions are left to be determined by recognised bodies of men practising the profession in question. This falls outside my competence to treat exhaustively. Speaking generally, however, it may be said that where the condition is only residence, there can be nothing to prevent an alien from becoming a candidate, or, on satisfying the tests imposed, from being granted the licence to practise : an express limitation to British subjects would be necessary to make the profession a " close borough ". Or the condition may be the taking of the oath of allegiance, which an alien cannot do. It should be noted that in some of the Colonies this is required of barristers-at-law before they are admitted to practise before the Courts.

When oath of allegiance required alien debarred.

(c)—The recognition of foreign professional qualifications is subject generally to the same rule : but where the practice of the profession is regulated by statute, the rules governing the application of statutes to aliens will apply.

Recognition of foreign qualifications.

(d)—If the statutory conditions are not fulfilled, a breach of them by an alien will render him subject to the penalties for illegal practice of the profession, in the same way as a subject.

Penalties for illegal practice.

These questions are fully dealt with in the Medical Acts with regard to the practice of medicine and surgery, dentistry and dental surgery, and veterinary surgery, which are the professions regulated by statute referred to above.

(1)—*MEDICINE AND SURGERY.*

21 & 22 Vict. c. 90.

The Medical Act, 1858, does not seem to have gone further than to deal with medical practitioners possessing only foreign diplomas practising at the time of the passing of the Act. The 46th. section provided that the General Council of Medical Education might dispense with the provisions of the Act " in favour of persons practising medicine or surgery within the United Kingdom on foreign or colonial diplomas or degrees before the passing of this Act ". But by the amending Act, 22 Vict. c. 21, persons not being British subjects possessing foreign diplomas, were allowed " to act exclusively as resident physician or medical officer of any hospital established solely for the relief of foreigners in sickness ".

Act applied to persons with foreign diplomas then practising.

In the Medical Act, 1886, Part II is specially devoted to

"Colonial and Foreign Practitioners". The sections dealing with foreigners are the following.—

49 & 50 Vict. c. 48.

49 & 50 Vict. c. 48. ss. 12, 13.

Registration of foreign practitioner with recognised diploma.

12.—[*amend.* S. L. R. Act, 1898.] Where a person shows to the satisfaction of the registrar of the General Council* that he holds some recognised foreign medical diploma or diplomas (as hereinafter defined) granted in a foreign country to to which this Act applies† and that he is of good character, and that he is by law entitled to practise medicine, surgery, and midwifery in such foreign country, he shall, on application to the said registrar, and on payment of such fee not exceeding £5 as the General Council may from time to time determine, be entitled, without examination in the United Kingdom, to be registered as a foreign practitioner in the medical register:

Provided that he proves to the satisfaction of the registrar any of the following circumstances: —

(1) That he is not a British subject; or

(2) That, being a British subject, the said diploma or diplomas was or were granted to him at a time when he was not domiciled in the United Kingdom, or in the course of a period of not less than 5 years during the whole of which he resided out of the United Kingdom; or

(3) That, being a British subject, he was practising medicine or surgery, or a branch of medicine or surgery, in the United Kingdom on the prescribed day‡, and that he has continuously practised the same in the United Kingdom or elsewhere for a period of not less than 10 years immediately preceding the prescribed day.

Medical diploma of colonial and foreign practitioner when deemed to be recognised.

13.—(1) The medical diploma or diplomas granted in a British possession or foreign country to which this Act applies, which is or are to be deemed such recognised colonial or foreign medical diploma or diplomas as is or are required for the purposes of this Act, shall be such medical diploma or diplomas as may be recognised for the time being by the General Council as furnishing a sufficient guarantee of the possession of the requisite knowledge and shall for the efficient practice of medicines surgery, and midwifery.

(2) When the General Council have refused to recognise as aforesaid any colonial or foreign medical diploma, the Privy Council, on application being made to them, may, if they think fit, after considering such application, and after communication with the General Council, order the General Council to recognise the said diploma, and such order shall be duly obeyed.

(3) If a person is refused registration as a colonial or foreign practitioner on any other ground than that the medical diploma or diplomas held by such person is or are not such recognised medical diploma or diplomas as above defined, the registrar of the General Council shall, if required, state in writing the reason for such refusal, and the person so refused registration may appeal to the Privy Council, and the Privy Council, after communication with the GeneralC ouncil, may dismiss the

* The General Council, means the General Council of Medical Education.

† The Act applies to British Colonies and foreign countries specified by Order in Council.

‡ The "prescribed day", means the day on which the Act is to come into operation in a Colony or foreign country.

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appeal or may order the General Council to enter the name of the appellant on the register.

(4) A person may, if so entitled under this Act, be registered both as a colonial and a foreign practitioner.

Further provisions of Medical Act.

By s. 14 there is to be a separate list of foreign practitioners in the medical register : s. 15 provides for the recognition of foreign medical titles : s. 16, for the registration of foreign degrees held by registered practitioners : and s. 17 gives power to the King in Council to declare the foreign countries to which this part of the Act is to apply.

(II.)—*DENTISTRY, AND DENTAL SURGERY.*

Provisions of the Dentists Act applicable to aliens.

The Dentists Act, 1878, goes a little more fully into the subject, as it expressly provides for the registration of resident aliens possessing the necessary qualifications : it further provides that persons registered under the Act may practise dentistry and dental surgery in any part of the dominions. The subject is dealt with in the following sections of the Act.

41 & 42 Vict. c. 33, ss. 4—10.

Provision as to offence of unregistered person taking, name &c, and as to offence of person taking title he does not possess.

4.—With respect to the offence of a person not registered under this Act taking or using any name, title, addition, or description as above in this Act mentioned, the following provisions shall have effect :

(1) He shall not be guilty of an offence under this Act—

(a) If he shows that he is not ordinarily resident in the United Kingdom and that he holds a qualification which entitles him to practise dentistry or dental surgery in a British possession or foreign country, and that he did not represent himself to be registered under this Act ;

* * * *

Privileges of registered persons.

5.—A person registered under this Act shall be entitled to practise dentistry and dental surgery in any part of Her Majesty's dominions, and a person shall not be entitled to recover any fee or charge, in any Court, for the performance of any dental attendance or advice, unless he is registered under this Act or is a legally qualified medical practitioner.

[49 & 50 Vict. c. 48, s. 28, 3rd para :] Notwithstanding anything in s. 5, the rights of any person registered under the Dentists Act, 1878, to practise dentistry or dental surgary in any part of Her Majesty's dominions other than the United Kingdom shall be subject to any local law in force in that part.

Qualification necessary for registration.

6.—Any person who—

(a) Is a licentiate in dental surgery or dentistry of any of the medical authorities ; or

(b) Is entitled as hereinafter mentioned to be registered as a foreign or colonial dentist ; or,

(c) Is bonâ fide engaged in the practice of dentistry or dental sur-

gery, either separately or in conjunction with the practice of medicine, surgery, or pharmacy, shall be entitled to be registered under this Act.

Registration of persons in dentists register.

7.—Where a person entitled to be registered under this Act produces or sends to the general registrar the document conferring or evidencing his licence or qualification, with a statement of his name and address, and the other particulars, if any, required for registration, and pays the registration fee, he shall be registered in the dentists register.

* * * *

A person resident in the United Kingdom shall not be disqualified for being registered under this Act by reason that he is not a British subject; and a British subject shall not be disqualified for being registered under this Act by reason of his being resident or engaged in practice beyond the limits of the United Kingdom.

Registration of colonial dentist with recognised certificate.

8.—When a person who either is not domiciled in the United Kingdom or has practised for more than 10 years elsewhere than in the United Kingdom... shows that he holds some recognised certificate (as herein-after defined) granted in a British possession, and that he is of good character, such person shall upon payment of the registration fee be entitled, without examination in the United Kingdom, to be registered as a colonial dentist in the dentists register.

Registration of foreign dentist with recognised certificate.

9.—Where a person who is not a British subject, or who has practised for more than 10 years elsewhere than in the United Kingdom,... shows that he obtained some recognised certificate (as herein-after defined) granted in a foreign country, and that he is of good character, and either continues to hold such certificate, or has not been deprived thereof for any cause which disqualifies him for being registered under this Act, such person shall upon payment of the registration fee be entitled, without examination in the United Kingdom, to be registered as a foreign dentist in the dentists register.

Recognised certificates of colonial and foreign dentist.

10.—The certificate granted in a British possession or a foreign country, which is to be deemed such a recognised certificate as is required for the purposes of this Act, shall be such certificate, diploma, membership, degree, licence, letters, testimonial, or other title, status, or document as may be recognised for the time being by the General Council as entitling the holder thereof to practise dentistry or dental surgery in such possession or country, and as furnishing sufficient guarantees of the possession of the requisite knowledge and skill for the efficient practice of dentistry or dental surgery.

If a person is refused registration as a colonial dentist or as a foreign dentist, the general registrar shall, if required by him, state in in writing the reason for the refusal, and if such reason be that the certificate held or obtained by him is not such a recognised certificate as above defined, such person may appeal to the Privy Council, and the Privy Council, after hearing the General Council, may dismiss the appeal, or may order the General Council to recognise such certificate, and such order shall be duly obeyed.

Other provisions of the Act.

By s. 11 the register of dentists is to contain a separate alphabetical list of all registered foreign dentists. And by s. 13 a registered dentist is liable to have his name erased from the register

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Conviction or unprofessional conduct abroad.

if he has "been convicted either in His Majesty's dominions or elsewhere of an offence, which, if committed in England, would be a felony or misdemeanor"; or if he has "been guilty of any infamous or disgraceful conduct in a professional respect".

(III)—*VETERINARY SURGERY AND MEDICINE.*

The Veterinary Surgeons Act, 1881, s. 13, provides for the recognition of foreign diplomas, and allows them to be registered under the Act.

44 & 45 Vict. c. 62.

Registration of colonial or foreign practitioner with recognised diploma.

13.—(1) Where a person shows that he holds some recognised veterinary diploma granted to him in a British possession, and either that the grant of such diploma occurred when he was not domiciled in the United Kingdom, or in the course of a period of not less than 5 years during which he resided out of the United Kingdom, or, if he was practising veterinary surgery in the United Kingdom at the passing of this Act, that he has practised veterinary surgery for not less than 10 years, either in the United Kingdom or elsewhere, he shall upon payment of the registration fee be entitled without examination in the United Kingdom to be registered as a colonial practitioner in the register of veterinary surgeons and to become to all intents a member of the said Royal College.*

(2) Where a person shows that he obtained some recognised veterinary diploma granted in a foreign country, and either that he is not a British subject, or, that if a British subject he has practised veterinary surgery for more than 10 years elsewhere than in the United Kingdom, or if he was practising veterinary surgery in the United Kingdom at the passing of this Act for not less than 10 years, either in the United Kingdom or elsewhere, and either continues to hold that diploma or has not been deprived thereof for any cause which disqualifies him for being registered under this Act, he shall on payment of the registration fee, be entitled without examination in the United Kingdom to be registered as a foreign practitioner in the register of veterinary surgeons and to become to all intents a member of the said Royal College.

(3) For the purposes of this section a veterinary diploma is any diploma, licence, certificate, or other document granted by any University, College, corporation, or other body, in respect of veterinary surgery, and includes a licence or authority to a person to practise veterinary surgery granted by any Department of or persons acting under the authority of the Government of the country or place within or without Her Majesty's dominions wherein the licence or authority is granted; and a British possession is any part of Her Majesty's dominions out of the United Kingdom; and a recognised veterinary diploma is a veterinary diploma recognised for the time being by the Council of the said Royal College as furnishing a sufficient guaranty of the possession of the requisite knowledge and skill for the efficient practice of veterinary surgery and as entitling the holder thereof to practise veterinary surgery, in the British possession or foreign country wherein the diploma was granted.

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* *i.e.* The Royal College of Veterinary Surgeons.

(4) If a person is refused registration as a colonial practitioner, or as a foreign practitioner, the Council of the said Royal College shall, if required by that person, state in writing the reason for that refusal, and if that reason be that the veterinary diploma held or obtained by him is not a recognised veterinary diploma, that person may appeal to the Privy Council, and the Privy Council, after communication with the Council of the said Royal College and the appellant, may either dismiss the appeal or order that Council to recognise that veterinary diploma.

Other provisions of the Act.

By s. 17 (2) persons who are not on the register are not entitled to recover in any Court any fee for operations or advice: and by s. 16 a penalty of £ 20 is imposed for false representation as to membership of the Royal College.

NOTE.

Among the Acts repealed by the Naturalization Act, 1870, was 11 and 12 Will. III, c. 6—"an Act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens."

In 1752, another Act—25 Geo. II, c. 39—was passed to obviate doubts which might arise on the Act of William III. The later Act has not been repealed, but was, as it were, given fresh vitality by being christened "The British Subjects Act, 1752" by the Short Titles Act in 1896. It cannot therefore but find a place in this book, though what its precise effect is now it is difficult to say.

At the time the Act of William III was passed, the only statute in existence dealing with the subject was that of 25 Edward III: at the time the Act of George II was passed, the Acts of Anne and of 4 George II were in force: at the present time, the statute of George III has come into force, the disability as to the tenure of lands by aliens has been swept away, and succession to realty belonging to an alien is assimilated to that of realty belonging to a natural-born subject.

Apart from these considerations however, and looking at the Act of 1752 on its own merits, we find that s. 1 deals expressly with inheritance "by the recited Act", *i. e.* by the repealed Act. This section has presumably passed away too. And s. 2 deals with descents cast upon a daughter "by virtue of this Act, or of the recited Act." But the recited Act has lost its virtue: and the virtue of "this Act", so far as s. 2 is concerned, must lie in s. 1, which has also lost its virtue. It would therefore appear that this Act has been impliedly repealed. And, seeing that it is now 150 years since it was passed, it is hardly possible that any persons should be now in being whose rights would depend on it, so as to justify its retention on the statute book.

25 Geo. II, cap. XXXIX :—

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An act to obviate doubts that may arise upon an act made and passed in the eleventh and twelfth years of the reign of his late majesty King William *the Third, intituled,* An act to enable his Majesty's natural born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.

WHEREAS *in and by an act of parliament made and passed in the eleventh and twelfth years of the reign of his late majesty King* William *the Third, intituled* An act to enable his Majesty's natural born subject to inherit the estate of their ancestors, either lineal or collateral, notwitstanding their father or mother were aliens ; *it is enacted, That all and every person or persons, being the King's natural-born subject or subjects, within any of the King's realms or dominions, should and might thereafter lawfully inherit and be inheritable, as heir or heirs, to any honours, manors, lands, tenements or hereditaments, and make their pedigrees and titles by descent from any of their ancestors, lineal or collateral, although the father and mother, or father or mother, or other ancestor of such person or persons by, from, through, or under whom he, she or they should or might make or derive their title or pedigree, were or was, or should be born out of the King's allegiance, and out of his Majesty's realms or dominions, as freely, fully and effectually, to all intents and purposes, as if such father or mother, or fathers or mothers, or other ancestor or ancestors by, from, through, or under whom he, she or they should or might make or derive their title or pedigree, had been naturalized or natural-born subjects : and whereas many doubts and inconveniencies may arise upon the said recited act, in case of persons gaining capacities to inherit and derive their pedigrees by virtue of the said recited act, after the deaths of their ancestors to whom they claim to be heirs, whereby estates well vested by descent, mortgages, purchases, and settlements, duly made, may be defeated :* for remedy whereof be it enacted and declared by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That the said statute shall not extend, or be deemed, taken, or construed to extend to give any right, or title to any person or persons to inherit as heir or heirs, or coheir or coheirs, to any person dying seised of any manors, lands, tenements or hereditaments, in possession, reversion or remainder, by enabling any such person or persons to claim or derive his, her or their pedigree through any alien ancestor or ancestors, unless the person or persons so claiming or deriving his, her, or their title as heir or heirs, coheir or coheirs, was or were, or shall be in being, and capable to take the same estate as heir or heirs, coheir or coheirs, by virtue of the said statute, at the death of the person who shall so last die seised of such manors, lands, tenements or hereditaments, and to whom he, she or they shall so claim to be heir or heirs, coheir or coheirs, by force of the said statute.

None to inherit by the recited act, but sush as shall be in being at the death of the ancestor who shall die feised.

II. Provided always, and be it enacted by the authority aforesaid, That in case the person or persons who shall be in being, and capable to take at the death of the ancestor so dying seised of any such honours, manors, lands, tenements or hereditaments, and upon whom the descent shall be cast by virtue of this act, or of the said recited act, shall happen to be a daughter or daughters of an alien, and that the alien father or mother, through whom such descent shall be derived by such daugh-

If the descent shall be cast upon a daughter,

ter or daughters, shall afterwards have a son born within any of his Majesty's realms or dominions; the descent so cast upon such daughter or daughters shall be divested in favor of such son; and such son shall inherit and take the estate in like manner as is allowed by the common law of this realm in cases of the birth of a nearer heir; or in case such father or mother shall have no son or sons, but shall have one or more daughter or daughters afterwards born within any of his Majesty's realms or dominions, the daughter or daughters so born afterwards shall inherit and take in coparcenary with the daughter or daughters upon whom the descent shall be cast at the death of the ancestor last seized; anything in this act contained to the contrary in any wise notwithstanding.

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and the alien father, &c. shall afterwards have a son, the daughter to be divested in favour of the son &c.

Chapter XIII.

Of Doubtful Nationality: and of Declarations of Legitimacy and Nationality.

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By the fourth paragraph of s. 7 of the Act of 1870, the Secretary of State has power to grant special certificates of naturalization to persons with respect to whose right to be deemed British subjects a doubt exists, "for the purpose of quieting such doubts".

Secretary of State's certificate in cases of doubtful nationality.

33 & 34 Vict. c. 14, s. 7: [4th. para.]

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

It is more than doubtful whether, after reading this section, the impression left on the mind as to what the power of the Secretary of State is, has any definite resemblance to the power which he actually has: for this paragraph is one of the dark passages of the Act, and it needs some careful analysis of the words used to fathom its intention. The meaning often attributed to it is that it gives power to settle cases of doubtful nationality: the actual meaning will be found to be the very reverse.

Difficulty of interpreting the provision.

In the first place it must be noted that the paragraph forms part of s. 7, which deals with the grant of certificates of naturalization; the provision must therefore be closely allied to that sub-

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ject, and the key to its meaning is, that the certificate granted is a certificate of *naturalization*, and not a certificate of *nationality*. The special circumstances of the case require that the certificate should be a special one, because the ordinary certificate is not, as we shall see, applicable to those circumstances.

Certificate is of naturalization not of nationality.

The grant of the special certificate may be made "to any person with respect to whose nationality as a British subject a doubt exists". Taking those words in conjunction with the nature of the certificate actually granted, it will be seen that a certificate of naturalization, which only admits the person to the status of British subject for the future, could not in any way help in the settlement of difficulties, the consequence of the doubtful nationality, which had arisen in the past. Suppose, for example, that a dispute had arisen as to the person's right to hold shares in a British ship: the grant of a *certificate of naturalization*, operative as to the future, would do little to solve the question whether he was entitled to have been registered as owner.

Nature of doubts as to nationality arising from difficulty of determining birth-place:

What are the doubts which might arise as to a person's "nationality as a British subject"? It is often a matter of great difficulty to ascertain a person's birth-place, more especially in a country which has not adopted a complete law of civil status. If a man's parents are dead, his knowledge of the place of his birth will depend on how much he remembers of what he has heard, which may by chance guide him to the right parish register, from which a copy of his birth certificate may be obtained. But possible difficulties as to his own birth-place, which may prevent his proving his birth within the realm—more especially if he is by parentage the subject of another State—become probable difficulties when it is necessary for him, knowing that he was born abroad, to prove his father's birth-place [4 Geo. II, c. 21]: and become certain difficulties, if, knowing that both he and his father were born abroad, he has to prove the birth-place of his grandfather [13 Geo. III, c. 21].

of person himself or of his ancestors..

Such doubts could not be settle by Secretary of State.

Assuredly it would be most convenient if the Act had provided a summary way of settling such difficulties. But the mere statement of the question whether it should be by way of reference to the Secretary of State answers it. No more inconvenient method could be contrived, for it would throw the burden of deciding difficult questions of fact, and perhaps of law, on the Secretary of State. This incongruity might be got rid of by allow-

ing a reference to the Courts in cases of difficulty : but the Act has not done this, nor has it provided that the Courts, in the event of the question of the person's nationality coming before them, should accept the finding of the Secretary of State. Both these omissions show, and I suggest conclusively, that nothing can have been further from the intention of the Legislature than to give the Secretary of State such a power.

But may be settled by the Courts under 21 & 22 Vict. c. 93.

Moreover, there is another Act, the Legitimacy Declaration Act, 1858, which does in fact give this power to the Courts. The probabilities, therefore, are against this contention. But any doubt as to whether this is the meaning of the provision or not is settled in the negative by the clause itself : for it expressly provides that the special certificate is to be granted " in manner aforesaid ". That to say, the special certificate of naturalization is to be granted in the same manner as the ordinary certificate of naturalization. " In the same manner " can only mean " subject to the same conditions ". And these conditions are, residence in the United Kingdom, or service under the Crown, for not less than five during the eight years preceding the application, with intention of permanent residence, or continued service, after the grant of the certificate. The Secretary of State may further require the same evidence, and is to exercise the same absolute discretion, as in the ordinary cases ; and the certificate is only to take effect after the oath of allegiance has been administered.

Certificate to be granted under same conditions as certificate of naturalization.

Why should such conditions be required to be fulfilled in order to enable doubts as to a person's nationality to be solved ? How will doubts which have arisen as to a person's nationality, by reason of difficulties in proving the birth-place, in the United Kingdom, either of himself or of his father or grandfather, be solved by the fulfilment of such conditions ? The doubts do not arise in connection with the facts on which the grant of the certificate depends : either as to the period of the applicant's residence in the United Kingdom, or of his service under the Crown, or as to his intentions, or as to his respectability or loyalty, or as to the qualifications of his four guarantors. Nor again, can they be connected with such personal matters as are referred to in the memorial—his name, address, age, profession, trade or occupation : whether he is married, whether he has children, whether they are under age or whether they reside with him. There is only one other allegation required for

Doubts do not arise in connection with facts required to be proved.

the usual memorial—" of what foreign State the applicant is a subject " : and the basis on which the special application rests is that there is a doubt as to this.

But then, the conditions on which the special certificate will be granted being precisely identical with those on which the usual certificate is granted, the questions immediately suggest themselves : if the conditions of naturalization have to be fulfilled, why should not the person resort to naturalization ? why should there be any special procedure ? The reason is the following.

Naturalization inapplicable where doubts exist as to whether person is or is not a British subject.

There is a doubt as to the applicant's nationality. He cannot therefore make the usual application, nor can the usual certificate be granted to him ; for that would be to assume that he is an alien, whereas it might ultimately be decided that he was not : or, if he is in fact a British subject, it would profess to make him what he actually is. The grant of the usual certificate would prejudge, and might prejudice, the ultimate determination of the doubtful question. It being therefore doubtful whether the case is one to which the ordinary certificate is applicable, the Act has provided a special certificate, with this special condition attached to it, that it is not to be " deemed to be any admission that the person to whom it was granted was not previously a British subject ". The converse of this condition must also be implied : that the grant does not prove that the person was *not* a British subject.

Special certificate only quiets doubts but does not settle them.

The meaning now seems clear : the grant does not profess to settle the doubts, only to quiet them. It enables the person to prosecute his case for declaration of British nationality under the Act of 1858, if he should be so minded, and by this means to have the doubts absolutely settled by the Court. The Secretary of State being satisfied as to the existence of the doubts, puts the person in the same position as an alien who has become naturalized.

The special certificate has the same effect as the usual certificate : but there is a curious omission with regard to it. The grant is not made subject to steps being taken to bring about the ultimate settlement of the doubts which the grant of it has quieted : and from this it might well be said that it matters little whether the doubts are *bona fide* or not. A concrete case will show that, although the Secretary of State has no responsibility

thrown on him so far as the settlement of the doubts are concerned, yet it is important that he should be satisfied that there are in fact doubts of a serious nature. To revert to the illustration already given, if the applicant were party to a suit in which his right to hold shares in a British ship was challenged, the probable effect of the Secretary of State's certificate would be practically that of an interim order allowing him to continue in possession: for with the certificate he could at least hold as a naturalized subject, while without it he would be an alien, and there might be difficulties as to his capacity to continue on the register.

Practical importance of certificate.

THE LEGITIMACY DECLARATION ACT, 1858.

The Act for declaring Legitimacy and Nationality.

The settlement of doubts is vested in the Courts by statute passed in 1858, known as the Legitimacy Declaration Act, a short title which excludes part of the purport of the legislation. It is really a Legitimacy and Nationality Declaration Act, for it was passed in order "to enable persons to establish their legitimacy, and the marriage of their parents and others from whom they may be descended, and also to enable persons to establish their right to be deemed natural-born subjects." This is the preamble, and it shows at once the essential difference between the object of the Act and that of the section just considered. Persons are enabled to establish their right to be deemed natural-born British subjects, and therefore all those doubts as to which reference has been made at the commencement of this chapter, more especially those in connection with the person's birth-place, may be brought for solution to the Courts.

Essential difference between the Act and the section.

It will thus be seen that the Act has a twofold operation: the first, which its short title explains, the settlement of doubts as to legitimacy: the second, which directly concerns our subject, the settlement of doubts as to British nationality. The reason for joining the two subjects in one Act is not at first sight clear: but it is apparently the following—It is provided that a declaration of legitimacy can only be applied for by a natural-born British subject: but the right to be a British subject may itself depend on the settlement of doubts as to legitimacy. Hence doubts as to legitimacy and doubts as to nationality became interlocked; and it was not unnatural that when the Act allowed

Questions of legitimacy and nationality interlocked.

complicated questions of legitimacy to be settled by the Court, it should have gone further, and allowed cases of doubtful nationality also to be settled by the same procedure.

The first two sections of the Act are as follow :—

21 & 22 Vict. c. 93, ss. 1, 2.

Application to Divorce Court for declaration of legitimacy or validity or invalidity of marriage.

1.—Any natural-born subject of the Queen, or any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the Court for Divorce and Matrimonial Causes,* praying the Court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid : and any such subject or person, being so domiciled or claiming as aforesaid, may in like manner apply to such Court for a decree declaring that his marriage was or is a valid marriage, and such Court shall have jurisdiction to hear and determine such application and to make such decree declaratory of the legitimacy or illegitimacy of such person, or of the validity or invalidity of such marriage, as to the Court may seem just : and such decree, except as herein-after mentioned, shall be binding to all intents and purposes on Her Majesty and on all persons whomsoever.

Application to Court for declaration of right to be deemed a natural-born subject.

2.—Any person, being so domiciled or claiming as aforesaid, may apply by petition to the said Court for a decree declaratory of his right to be deemed a natural-born subject of Her Majesty, and the said Court shall have jurisdiction to hear and determine such application and to make such decree thereon as to the Court may seem just : and where such application as last aforesaid is made by the person making such application as herein mentioned for a decree declaring his legitimacy or the validity of a marriage, both applications may be included in the same petition : and every decree made by the said Court shall, except as hereinafter mentioned, be valid and binding to all intents and purposes upon Her Majesty and all persons whomsoever.

This enactment has been criticised as being difficult to construe, and as failing to give all the relief intended by its drafters. If this is a true criticism with regard to ordinary questions of legitimacy, it is doubly true when doubtful questions of nationality complicate the issue. The drafting itself is most confused ; and the subjects of legitimacy, validity of marriage, and nationality are so mixed together, that the sections need the most careful unravelling to understand them.

Necessity for careful analysis of the Act.

Nationality being one of the issues, it will be useful to repeat here the definition of natural-born subjects given on p. 53.

* Now the Probate Division of the High Court.

Natural-born British subjects are :

(a) Children born within the dominions :—

(b) Children born abroad of a father who falls within category *(a)* :—(7 Anne, c. 7, and 4 George II, c. 21).

(c) Children born abroad of a father who falls within category *(b)*.—(13 George III, c. 21).

Definition of natural-born British subjects.

We must now proceed to examine the five different cases which are provided for under ss. 1 and 2. There are two special conditions attached to the applications, but these must be reserved until the cases themselves have been examined.

Examination of different cases falling under the Act.

(A).—*PETITION FOR DECLARATION OF LEGITIMACY.*

Case A—*under* s. 1.

A natural-born subject may petition the Court for a decree declaring his legitimacy.

Example. H a natural-born subject, the son of X the husband, and Y the wife.

Question raised by the petition : is H legitimate ?

The issues are : *i.* was H born in wedlock ? *or*

ii. were X and Y within the prohibited degrees ?

The issues and decree.

The decree will be : under *i*, declaratory of legitimacy of H, or the reverse :

under *ii*, declaratory of the validity of the marriage of X and Y, and consequent legitimacy of H, or the opposite.

So far as nationality of the parties is concerned

H may be in category *(a)*, *(b)* or *(c)* :

X may be in either category: Y will be in the same category as X: but if the marriage is declared invalid, Y will revert to her former nationality.

Presumably the marriage, in this and the following cases, may have been performed either in the United Kingdom or abroad.

The marriage of the grandparents, also referred to in s. 1, has no bearing on the question. Illegitimacy is not a transmissible vice ; and therefore the legitimacy of H will not be affected by the fact that, from any cause, either of his parents, X or Y, is illegitimate.

Illegitimacy of parents not transmissible.

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(B).—*PETITION FOR DECLARATION OF NATIONALITY ON THE GROUND OF LEGITIMACY OR VALIDITY OF A MARRIAGE.*

Case B—*under* s. 1.

A person may petition the Court for a decree declaring him to be a natural-born subject on the ground (wholly or in part)

i. that he is legitimate : or

ii. that the marriage of his parents was a valid marriage : or

iii. that the marriage of his grandparents was a valid marriage.

Example. H, born in Paris, the son of X and Y : X the son of M and N : Y the daughter of S and T.

If H was not born abroad he is a natural-born subject, and the case falls within *case* A : but H may be in category (*b*) or (*c*).

The issues are twofold as in *case* A : illegitimacy, and validity of marriage.

Complex issue of illegitimacy and nationality.

The issue of legitimacy arises out of *i* and *ii* ; but not, as was seen in *case* A, out of *iii*, which concerns the validity of the marriage of either of the grandparents.

The issue of legitimacy may be stated thus—can H be a natural-born subject if he is illegitimate, either from having been born out of wedlock, or because the marriage of his parents was within the prohibited degrees ? As we have seen in a previous chapter, illegitimate children born abroad cannot come within the benefit of the statutes of George II or George III, and therefore if the finding is that H was born out of wedlock, or that the marriage of X and Y was within the prohibited degrees, H is not a natural-born subject.

Relation of the issues to the statutes.

see Chapter IV ; p. 64.]

The absence of any express reference to the statutes raises another difficulty. The issues seem to be directly concerned with them, for it is only in consequence of them that nationality has any relation to, or is in any way dependent on, legitimacy. But the decrees contemplated by the Act are with regard to the existence, or validity of the parent's marriage, and are not such as would arise on the construction of the statutes : for example, whether the father was a natural-born subject at the time of the birth of the child. It is hardly probable that this question would be excluded from a discussion which leads to a declaration that a person is a natural-born subject, for if the statutory condition is not fulfilled he would not be a natural-born subject. It is possible

[*cf.* p. 54.]

that the statutory issue is saved by the parenthesis " (wholly or in part) ", which seems to point to the fact that there may be grounds to be considered in the main issue, other than those indicated. But here again the validity or invalidity of the marriages of either of the grandparents is irrelevant. It seems more than probable that the grandparents were introduced owing to the misconception, already alluded to, as to the effect of the statute of George III.

Introduction of grandparents irrelevant.

[*cf.* p. 51.]

(C).— *PETITION FOR DECLARATION OF VALIDITY OF MARRIAGE.*

The second part of s. 1 provides that " any such subject or person " may, in like manner, apply to the Court " for a decree declaring that his marriage was or is a valid marriage ". This refers to the subjects or persons mentioned in the first part of the section ; it is therefore necessary to consider two separate cases under the second part.

Case C—*under* s. 1 (2nd. part.)

" Any such subject, " *i. e.*

Any natural-born subject, may petition the Court for a decree declaring his marriage valid.

Example. X a natural-born subject married to Y.

Question raised by the petition : is the marriage of X and Y valid ? The issue is : are X and Y within the prohibited degrees ?

Simple issue of marriage.

[*see also* as to meaning of " validity ", *case* E.]

The decree will declare the validity or invalidity of the marriage : the consequence of the decree will be the legitimacy or illegitimacy of H the son.

So far as the nationality of parties is concerned :

X may be in category (*a*), (*b*) or (*c*) : Y will be in the same category as X ; but, if the marriage is declared invalid, Y will revert to her former nationality.

The nationality of H is not in issue, but it will be affected by the decision, if he was born abroad. If the marriage is declared invalid he will not be a British subject, whether he come under category (*b*) or (*c*) ; or rather, whether X is the father referred to in one or the other of those two categories.

(D).—*PETITION FOR DECLARATION OF VALIDITY OF MARRIAGE WHERE NATIONALITY DOUBTFUL.*

Case D—*under* s. 1 (2nd part.)

"Any such person," *i. e.*

Any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or the validity of a marriage, may petition the Court for a decree declaratory of the validity of his marriage.

In order to define "such person" it is necessary to introduce from the first part, the description of the persons who may petition under it; this involves the elaborate statement of the case given above*; but a difficult question now arises in connection with the meaning of this definition. The petitioner prays for a decree declaratory of the validity of his own marriage. But his right to be deemed a natural-born subject may depend on the validity of the marriage of his parents, and the question is whether a prior decision that he is a natural-born British subject is necessary before the Court will entertain the petition as to his own marriage. The argument, on the one side, is that the above amplification of "such person" is merely descriptive of the person to whom the right to petition is given: on the other side, that the intention of the Act is to benefit only natural-born subjects, and that the resolution of the doubt is essential to the commencement of his own proceedings. I am inclined to think that this is the meaning of the provision, though it may be said that there is nothing inherently improbable in the idea that the petition may be filed by persons who are illegitimate or the offspring of invalid marriages. The point is not free from doubt: and the essential condition that the petitioner must be domiciled in England seems at first sight to support the latter view.

Question whether decree to cover both questions of nationality and validity of marriage.

If this is so, the first case which comes under this rule is a combination of *case* A and *case* B.

Example. H the son of X the husband and Y the wife.

If the "descriptive construction" is right, H may petition

* In the construction of this section it should be noticed that the sentence, such Court shall "make such decree declaratory of the legitimacy of such person, or of the validity or invalidity of such marriage, as to the Court may seem just", is the summary of the Court's jurisdiction, and applies to the four cases contemplated by the section. The nature of the decree to be given by the Court will be governed by the petition in each case, and this is expressly provided for in each part of the section.

for a decree declaratory of the validity of his own marriage, irrespective of the nature of his descent from X and Y.

If this construction is not right, then it follows that to the consequences of decrees in *cases* A and B favourable to H's British nationality, must be added his right to petition under *case* B.

But there is another class of persons whose right to be deemed British subjects depends on the validity of a marriage—married women: and the rule is also applicable to them, the two marriages referred to being in this case the same.

Application of rule to married women.

Example. Y a foreigner and a widow, married to X a natural born British subject.

Question raised by the petition: is the marriage valid? The issue is: were X and Y within the prohibited degrees?

The decree will declare the validity or invalidity of the marriage: the consequence of the decree will be that Y will be a British subject if the marriage is valid, or an alien if it is invalid, under s. 10 (1) of the Act of 1870. Neither the nationality nor the legitimacy of H is in issue, but both will be affected by the decision if he was born abroad. If the marriage is declared invalid, he will be neither legitimate nor a British subject; but if the marriage is declared valid, he will be both legitimate and a British subject. As before X may be the father referred to either in category (*b*) or (*c*).

Result of decree.

[*cf.* p. 64.]

In principle there is no reason why the petition should not be presented by a married woman during coverture, though it is possible that rules of procedure might prevent it: but cases might arise where this would be a hardship, as when the husband declined, or was unable to petition. If the rule given in chapter IV is sound, that a divorced woman retains her British nationality, then it would appear that a divorced woman might petition under this rule. The Act having been passed after the year 1850, " his " includes " her ", under s. 1 of the Interpretation Act, 1889.

Petition during coverture or after divorce.

[*cf.* p. 62.]

52 & 53 Vict. c. 63.

(E)—*PETITION FOR DECLARATION OF NATIONALITY WHERE DOUBTS EXIST.*

Case E—*under* s. 2.

A person may petition the Court for a decree declaring his right to be deemed a natural-born subject.

Petition may be combined with any of former petitions.

The petition may be coupled with a petition in respect of the person's legitimacy, or the validity of a marriage: which may be his own, or any other marriage on which his right either to be legitimate, or to be a natural-born subject, depends.

The decree may be such as to the Court may seem just.

In the previous cases the right to be deemed a natural-born subject is treated as from the point of view of legitimacy or validity of marriage; but any question which may arise under the statutes of George II and George III must, it has been suggested, also be determined. But the case for which s. 2 provides, deals specially with this question, and enables doubts as to whether the conditions of those statutes have been fulfilled to be decided; it deals in fact with the cases of doubtful nationality to which reference has been made under s. 8 of the Naturalization Act. It was suggested that the law did not intend to leave the solution of these doubts to the Secretary of State, as a means of solving them had already been provided by this Act.

[*cf.* p. 196.]

Cases of doubt under the statute.

The doubts may arise with regard to any of the incidents connected with the birth of persons in categories (*a*) (*b*) or (*c*):— as to the birth-place of the petitioner himself, or of his father or grandfather; or, if he is in category (*b*) or (*c*), as to the validity of the marriage of his father, or as to whether he was born in wedlock.

Decree affects legitimacy of children.

The decree declaratory of his British nationality will carry with it the nationality of his children, according as they fall within (*b*) or (*c*); if they fall within (*a*) they are British subjects by right of birth.

Other forms of invalid marriages. 5 & 6 Will. IV. c. 54. 12 Geo. III, c. 11.

So far the validity of a marriage has been considered only from the point of view of the prohibited degrees, under the Marriage Act, 1835. But the question of validity may turn on the construction of the Royal Marriages Act, 1772, or under any other statute with makes marriages invalid. It also extends to another class of cases which are more generally included under the head of "recognition of marriages": cases where marriages have been contracted, as it was usually said, in non-Christian countries. In the well known case of *re Bethell*, *Bethell* v. *Hildyard*, Stirling J. reviewed all the previous cases, and declined to recognise as legitimate the issue of the Englishman with a woman of the Baralong tribe, among whom it was found that polygamy prevailed. These cases have been fully discussed by many authorities, and

Recognition of marriages.

[L.R.38 Ch. D. 220.]

need not be gone into again. The issues arose in the course of ordinary proceedings before the Courts; but it is clear that the special question involved could have formed the subject of a petition under the Legitimacy Declaration Act, for what is usually termed the question of "recognition", is only another name for the question whether the English law will accord to the marriage and its offspring the ordinary consequences of marriage: in other words, whether the marriage is valid by English law. In fact, the expression "validity of the marriage" is nearly always used in the judgments.

Case of marriages in Japan. [L. R. 15 P. D. 76]

There is one case reported in which the question was raised by way of petition under the Act—*Brinkley v. Attorney General*. The petition was presented by the husband for a declaration of the validity of his marriage with a Japanese lady, which had been celebrated according to the law of Japan. It was a simple example of *case* C, for no question arose as to his being a natural-born subject; though resident in Japan, his Irish domicil was proved by affidavit. Sir J. Hannen held that by the law of Japan marriage meant that one man unites himself to one woman to the exclusion of all others, and therefore that the requirement of English law was satisfied. He further pointed out that the phrase "Christian marriage" was only used for convenience to express this idea.

Act enables doubts to be settled in life-time of person chiefly interested.

The second part of the first section thus enables an Englishman who has married in an oriental country, so long as he remain domiciled in England, to settle during his life-time any doubts which may exist as to the validity of his marriage, and consequent legitimacy of his children; he may thus dispose of questions, often of great difficulty, which would probably arise after his death, to the disturbance and waste of his succession.

The conditions.

This brings us to the conditions attached to the presentation of the petition. In all cases the petitioner must be domiciled in England or Ireland, or must be a claimant real or personal estate in England.

Domicil.

The condition of domicil defines the jurisdiction of the Court, as to which one point must be considered. The power to hear these petitions of validity of marriage was added by the Act under consideration to the general competence of the Divorce Court after it was first created. The jurisdiction of the Court was not defined; but the Courts, so far as dissolution of marriage is

Jurisdiction of Divorce Court.

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concerned, have worked out for themselves a rule of jurisdiction which depends not on domicil but on the matrimonial home*, a distinction which in some cases is very real, as was shown in the case of *Niboyet* v. *Niboyet*. But the construction of the words of the Act, which are precise, would seem to warrant a departure from this rule of jurisdiction : and if this is so, the Court would entertain a petition for validity of marriage if the domicil was English, though the matrimonial home was abroad : and conversely, would not entertain such a petition although the matrimonial home was in England, if the domicil was abroad.

[L. R. 4 P. D. 1.]

The condition of domicil, so far as regards questions of legitimacy, appears to be a recognition of the rule that legitimacy depends on the law of the domicil. The extension of the jurisdiction to persons domiciled in Ireland, to the exclusion of those domiciled in Scotland, is not easy to understand.

But when the condition is applied to cases where nationality is in issue, the reason for insisting on an English domicil is not apparent : it seems rather to be due to a confusion between legitimacy which is dependent on domicil, and nationality which is not. The condition might exclude persons from the benefit of the second section of the Act, who desire to settle doubts as to their nationality under the statutes of George II and George III ; and for it might well be that such persons would be domiciled in the country of their birth. The only way in which the doubts could then be settled would be if the question arose in any other case.

Nationality and legitimacy confused.

The second condition gets rid of the question of domicil, and in the alternative allows the petition to be presented by a claimant to real or personal estate in England. The introduction of this alternative goes far to show that the competence of the Court is based rather on presumed convenience than on principle. But apart from this, the condition is difficult to appreciate on its merits. So far as realty is concerned, it probably had in view the fact that at the time it was passed aliens could not hold realty in England, and therefore it allowed a man as to whose nationality there was a doubt, and who was a claimant to realty, to have this point settled by an inexpensive method prior to his entering his claim to the property. But this never applied to personal property, which aliens always could hold ; and therefore

Claim to property.

* *see* " Foreign Judgments " p. 289.

this alternative condition seems ill-adapted to the legal conditions of the present day.

Decree a judgment of status.

The decree on the petition, whether it be of legitimacy or illegitimacy, of validity or invalidity of marriage, of the right or absence of right to be deemed a British subject, is from its nature a judgment of status, and as such entitled to entitled to universal recognition. At the end of both the sections it is nevertheless expressly provided that the judgment shall be "binding to all intents and purposes on Her Majesty and on all persons whomsoever".

Persons naturalized may petition under the Act.

The Act speaks of natural-born subjects: but seeing that naturalization gives all the rights of natural-born subjects to persons naturalized, it follows that they also can avail themselves of the provisions of the Act, in so far as they are applicable to them.

Procedure.

The procedure is now by way of petition to the Probate Division of the High Court: it is to be accompanied by an affidavit verifying the petition and of absence of collusion, copies of which are to be delivered to the Attorney General who is to be respondent. The Court may allow persons to be cited who may become parties to the proceedings and may oppose the application*: and there is a saving of the rights of certain parties not cited. The Act is made part of the Matrimonial Causes Act, 1857, and appeals lie to the Court of Appeal and House of Lords in the same manner as they lie under that Act.

20 & 21 Vict. c. 85.

Petitions in Scotland.

By s. 9, a person domiciled in Scotland, and claiming heritable or moveable property in Scotland, may insist in an action of declarator that he is a natural-born subject, the Court of Session being granted the same jurisdiction as in declarators of legitimacy or declarators of bastardy.

21 & 22 Vict. c. 93, s. 9.

Action of declarator by person domiciled in Scotland.

Petitions in Ireland.

Any person domiciled in Scotland, or claiming any heritable or moveable property situate in Scotland, may raise and insist in an action of declarator before the Court of Session, for the purpose of having it found and declared that he is entitled to be deemed a natural-born subject of Her Majesty:

* The question whether any other persons than the Attorney General are to be cited is to be decided by the Registrar, all the facts of the case being put before him by affidavit; an appeal lying from his decision, or he referring difficult cases to the Court: *Brinkley* v. *Attorney General*. [L. R. 14 P. D. 83.]

and the said Court shall have jurisdiction to hear and determine such action of declarator, in the same manner and to the same effect, and with the same power to award expenses, as they have in declarators of legitimacy and declarators of bastardy.

31 & 32 Vict. c. 20.

The Irish Act,—the Legitimacy Declaration Act (Ireland) 1868—is a reproduction of the English Act; the jurisdiction of the Irish Court being extended to persons domiciled in Ireland or England. The Act contains an interpretation clause which must be noticed, defining the terms "person" and "subject".

31 & 32 Vict. c. 20, s. 10.

Definition of person and subject.

In the construction of this Act the words "person" and "subject" shall include parties cited as respondents as well as petitioners, and shall comprise all of a class claiming or deriving in the same right, who would as children or grand-children or in their own persons be comprehended within the term "issue".

The rule of jurisdiction under the Acts for the different parts of the United Kingdom is the following:—

General rule of jurisdiction for the United Kingdom.

Persons domiciled in England or Ireland may petition in either country; but if they are domiciled in Scotland they must petition in that country. If the ground of the petition is a claim to property only, irrespective of domicil, the petition must be presented in the country in which the property is situate.

The sections of the Act which have not already been printed do not call for any special remark. They are as follows—

21 & 22 Vict. c. 93:—*An Act to enable persons to established Legitimacy and Validity of Marriages, and the right to be deemed Natural-born Subjects.* [2nd. August, 1858.]

WHEREAS it is expedient to enable persons to establish their legitimacy, and the marriage of parents and others from whom they may be descended, and also to enable persons to establish their right to be deemed natural-born subject:—

* * *

[for ss. 1, 2, *see* p. 194.]

3.—Every petition under this Act shall be accompanied by such affidavit verifying the same, and of the absence of collusion, as the Court may by any general rule direct.

*[Matrimonial Causes Act, 1857.]

4.—All the provisions of the Act 20 & 21 Vict. c. 85,* so far as the same may be applicable, and the powers and provisions therein contained in relation to the making and laying before Parliament of rules and regulations concerning the practice and procedure under that Act, and fixing the fees payable upon proceedings before the Court, shall extend to applications and proceedings in the said Court under this Act as if the same had been authorized by the said Act 20 & 21 Vict. c. 85.

5.—In all proceedings under this Act the Court shall have full power

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to award and enforce payment of costs to any persons cited, whether such persons shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that such costs should be paid.

6.—A copy of every petition under this Act, and of the affidavit accompanying the same, shall, one month at least previously to the presentation or filing of such petition, be delivered to Her Majesty's Attorney General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating thereto.

7.—Where any application is made under this Act to the said Court, such person or persons (if any) besides the said Attorney General as the Court shall think fit shall, subject to the rules made under this Act, be cited to see proceedings or otherwise summoned in such manner as the Court shall direct, and may be permitted to become parties to the proceedings, and oppose the application.

8.—The decree of the said Court shall not in any case prejudice any person, unless such person has been cited or made a party to the proceedings or is the heir-at-law or next of kin, or other real or personal representative of or derives title under or through a person so cited or made a party; nor shall such sentence or decree of the Court prejudice any person if subsequently proved to have been obtained by fraud or collusion.

* * * *

[for s. 9, *see* p. 203.]

10.—No proceeding to be had under this Act shall affect any final judgment or decree already pronounced or made by any Court of competent jurisdiction.

11.—The said Act 20 & 21 Vict. c. 85 and this Act shall be construed together as one Act; and this Act may be cited for all purposes as "The Legitimacy Declaration Act, 1858".

Chapter XIV.

Of Nationality in the Colonies; and of Colonial Nationality.

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Up to the present it has been assumed with regard to nationality at common law, that the doctrine of the birthright was not limited to the United Kingdom, but extended to the whole of the King's dominions. The doctrine as originally formulated was probably limited to the kingdom, or the realm: but even as early as the statute of Edward III, it took the more expanded form "birth within the ligeance", and it was on this basis that it was expounded in *Calvin's case*. From this it should follow that it is now correct to say that "birth within the dominions" makes a person a British subject by the common law.

Common law and statutes as to nationality assumed to extend to Colonies.

So as to the statutes, it has been assumed that they also apply to the dominions: that is to say, that "birth abroad", or "birth

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beyond the ligeance", is not limited to birth beyond the kingdom, but extends to birth beyond the dominions.

At first sight indeed it would seem superfluous to say that the law of nationality in the Colonies is identical with the law of nationality in the United Kingdom: that, although the law of naturalization may vary in different parts of the Empire, the law of nationality cannot vary: or, putting this in another way, that persons born in the Colonies are British subjects by common law, and persons born beyond the dominions, under the conditions laid down by the statutes of George II and George III, are British subjects in virtue of those statutes. Both propositions however require examination.

Examination of the question.

The application of the Common Law rule to the Colonies.

Speaking very broadly, the common law extends to settled Colonies: it does not extend to conquered or ceded Colonies, but the former law in force remains.

Common law does not extend to ceded Colonies: but common law rule of nationality does.

The mere statement of the elementary rule at once raises the question whether the nationality of persons, born in the Colonies, is not determined by some other and broader rule, which may be inherent in the nature of sovereignty.

The essential elements of sovereignty are thus once more put in issue.

Statute of Edw. III based on the common law as to birth within the realm.

The statute of Edward III was not declaratory of the common law as to persons born beyond the realm: nor indeed was it declaratory of the common law as to persons born within the realm: it is sufficient to say that it proceeded on the accurate assumption that the common law drew a hard and fast line between persons born within and persons born without the realm, the former being subjects, the others aliens. Of course if there were no other rule to take account of, the correlation of allegiance and protection might be sufficient warrant for saying that the "realm" was the old equivalent for the modern "dominions."* But all that old argument may be admitted: something is still wanted to help the solution of the difficulty, which is this—Since the English common law does not, but the foreign law does, obtain in conquered or ceded Colonies, how is it possible to say that the rule of nationality which is a rule of common law, obtains in these Colonies in the absence of express provision?

* The *Century Dictionary* gives the following definition of "realm":—A royal jurisdiction or extent of government; a King's dominions; a kingdom.

This continuance of the foreign law is in part the policy, and in part the law, of England. This is not the time to criticise the policy, if criticism it deserves : nor is it possible here to make an exhaustive enquiry into the law which governs the consequences of the policy, the settlement of the inevitable conflicts of law which result from it : they will be settled by the Courts when they arise. But it is pertinent to the subject in hand to enquire what those consequences are with regard to the important question of nationality, indicating rather than insisting on the arguments involved.

Principle of continuance of foreign law ;

how it affects nationality.

In the first place it is essential to be clear as to the principle by which the foreign law is in force in any Colony. It is sometimes said that it owes its origin to the capitulation ; and it must be admitted that there is some warrant to be found in the words which are common to capitulations—" the inhabitants shall preserve their religion, laws, and customs." Even so great a lawyer as the present Lord Davy, when arguing in *Exchange Bank of Canada* v. *The Queen*, seems, unless the error is the reporter's, to have said that at the time of the " cession " the continuance of the laws in force were guaranteed to the people of the province of Quebec.*

Principle does not depend on the capitulation.

[L. R. 11 App. Ca. at p. 101.]

But capitulations are but capitulations : the surrender by one commander of the belligerent forces to the other of so much as is under his command. The terms bind all persons so long as the capitulation stage lasts, but no longer. Afterwards comes the treaty, by which the territory is ceded in full right and sovereignty without limitation. The capitulation is merged into the cession : the terms of the capitulation are replaced by the terms of the treaty. It is impossible for the words or conditions of the capitulation to be read into the treaty, for this would involve a limitation of the rights of the new Sovereign : and if he were to be bound by them, every enactment which altered the old law would be a violation of the treaty. It would be tantamount to admitting that the ceding Sovereign still retained a control over the acts of the Sovereign to whom he has ceded the territory : for the treaty is made with him, and not with his former subjects.

Terms of capitulation cease when cession completed by treaty.

*It is doubtful whether there is any Colony in which the continuance of its old foreign law has been guaranteed at the cession. In the case of Quebec, there is an express provision in 14 Geo. III, c. 83, 11 years after the cession, that all matters of controversy relative to property and civil rights are to be decided by the laws of Canada, [s. 8], but that the criminal law of England shall be administered in the province [s. 11]. It is possible that " cession " was used as meaning "capitulation".

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The utmost that can be said for the effect of the treaty is that it secures for the subjects of the conquered or ceded territory the rights of subjects of the new Sovereign, if they choose to accept those rights, in token of which they are required to take the oath of allegiance. But no argument bearing on the question in hand can be derived from the treaty.

[*see* Chapter V.]

The change of nationality consequent on a change in the sovereignty has already been considered. The previous discussion was limited to persons in being at the time of change: we are now concerned with the broader question of the continuance of the law after the change, and the nationality of persons thereafter to be born.

The principle, though it rests on policy, is, as I have already said, an admitted part of the law of England; and in the absence of any action on the part of the Executive would be acted on by the Courts. The rule of law is that the laws of a conquered or ceded Colony remain in force until they are altered. Allusion is made to this doctrine in many cases; it will be sufficient however to give one quotation only, from the judgment of the Privy Council in *Mayor of Lyons* v. *East India Company*.

[1 Moo. Ind. App. at p. 271.]

"It is agreed on all hands, that a foreign settlement obtained in an inhabited country by conquest or cession from another Power, stands in a different relation to the present question [whether the English law incapacitating aliens from holding real estate was in force in Calcutta: *temp.* 1830] from a settlement made by colonising, that is, peopling an inhabited country.

"In the latter case it is said, that the subjects of the Crown carry with them the laws of England, there being of course no *lex loci*. In the former case it is allowed that the law of the country continues until the Crown, or the Legislature change it. This distinction is taken in all the books: it is one of the six propositions stated in *Campbell* v. *Hall*, as quite clear, and no matter of controversy in the case."

Cowp. 204.

How far continuance of foreign law affects law concerning the Sovereign.

In order to ascertain the effect of this on the law of nationality, we must now examine how far the fundamental principle affects the Sovereign himself.

The consequence of a cession of territory "in full and absolute sovereignty" would seem to be, that all the law which concerns the sovereignty would immediately come into force within that territory, abrogating, *ipso facto*, any laws in existence in that territory appertaining to the sovereignty which has passed away. A concrete case will make this point clearer. The French

Civil Code is in force in Mauritius, as well as in some other parts of the Empire. That Code deals with the national status of individuals, and this is a law appertaining to the sovereignty. Is it possible to say that in these parts of the Empire nationality is governed, not by the common law of England, but by the Civil Code of France?

Is it possible for nationality of British subjects to be governed by French law?

The following decisions on cognate topics must be referred to. In *re Oriental Bank Corporation, ex parte the Crown*, it was held that when the Oriental Bank was wound up, the deposits by the Colonial Treasuries in those Colonies in which the Bank had branch offices were entitled, in virtue of the prerogative right of the Crown, to be paid in priority to creditors of equal degree. This principle was acted on in *Liquidators of Maritime Bank of Canada* v. *Receiver General of New Brunswick*.

Cases dealing with prerogatives of the Crown.

[L. R. 28 Ch. D. 643.]

[L. R. 1892 App. Ca. 437.]

But it was also held in *Exchange Bank of Canada* v. *The Queen*, that in Quebec, where the French Civil Code prevails, the prerogative did not hold good, because the *privilèges* of the Treasury were dealt with in the Code, and this special priority was not recognised.

[L. R. 11 App. Ca. 157.]

The examination of the questions which underlie these, as well as some of the previous decisions, would lead us too far from our subject: we have only to concern ourselves with the question whether the law of nationality in the Colonies is in any way affected by them.

The position may be thus stated. A prerogative claim is advanced in the Colony on behalf of the Crown: it is met by the argument that the matter to which the prerogative relates is dealt with, either positively or negatively, by the local law, which has been allowed to remain in force; and it is dealt with in such a manner as to bind the Crown (a point much insisted on in the *Canada Bank case*); therefore the prerogative cannot be maintained. Does this apply to the common law rule of nationality?

Question whether these decisions affect the law of nationality.

If the question could by any chance have been propounded to the Judges who decided *Calvin's case*, it is not difficult to imagine the manner in which this still more "newly-hatched conceit" would have been summarily disposed of. No one can doubt, they would have said, but that the law of nationality is as it were one of the most beautiful jewels of the Crown of our Sovereign Lord the King, whom God long preserve; it is of the essence

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of his sovereignty : the proposition that that law extends to, and that that jewel sheds its lustre throughout, the whole of the King's dominions requires no argument to support it : it is a fundamental legal fact which applies of its own inherent strength to all who come within the sway of the British Crown : it is the condition attached to being a British subject, wherever that subject may be.

But this does not get rid of the argument : for, in so far as it affects the Sovereign, nationality at common law is essentially a prerogative right. If this is not true there is little left to argue.

[1 Mo. P. C. 175.] The basis of one part of the argument in the judgment in *Mayor of Lyons* v. *East India Company*, is that wherever the sovereignty of the British Crown is established all that is inseparable to the sovereignty, and as it were an essential part of it, is introduced. * The question in the case was whether the title of the Crown to an alien's estate, at the time the case arose, was within this principle : and it was decided that it was certainly not an incident of sovereignty. But the mere assumption that all questions of nationality are incident to the sovereignty does not settle the point : for, so far as I can ascertain, the question whether rights which are incident to the sovereignty continue when there is a local law dealing with them in the opposite sense, has only been considered in connection with the prerogative of priority ; and in that case the ruling of the Privy Council was adverse to the right of the Crown. It is therefore important to consider this question apart from the general *dicta* which are to be found in the books.

Difficulty re-stated.

Nationality is dealt with by the local law which is in force in a ceded Colony : it is moreover dealt with in such a manner as to bind the Crown—for, if a man is by law not a subject, the Sovereign cannot exercise any sovereign rights against him. Will the English law nevertheless prevail ? I believe the question may be determined by reference to other principles.

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* There is a dictum of Lord Stowell to a similar effect in *Ruding* v. *Smith*.

[2 Hagg. Consist. Rep. 382 : St. Tr. N. S. 1, at p. 1062.] " I am perfectly aware that it is laid down generally in the authorities referred to, that the laws of a conquered country remain till altered by the new authority.

" I have to observe, first, that the word remain has *ex vi termini*, a reference to its obligations upon those, in whose usage it already existed, and not to those who are entire strangers to it, in the whole of their preceding intercourse with each other. Even with respect to the ancient inhabitants, no small portion of the ancient law is unavoidably superseded, by the revolution of Government that has taken place. The allegiance of the subjects, and all the law that relates to it – the administration of the

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There are several instances in which English law, both common and statute law, is applied to countries and places, and under circumstances for which it was not originally designed. The commonest example of this is where a statute contains a section making it applicable to the Colonies or to countries in which the King exercises foreign jurisdiction, sometimes directly, but more often through the medium of an Order in Council. In such cases there is either no difficulty in the application, or the statute itself provides the necessary changes in the machinery.

Rule governing application of English law to colonies and foreign countries.

By provision in the statute applied.

But there are other cases where the application or extension is made bodily, and either there is no machinery for working the law in its new sphere, or else the method of adaptation is indicated in the broadest manner possible. This occurs in the four following cases.

Application of the law bodily:

i. The rule of the common law for Colonies acquired by settlement, is that the settlers are supposed to take with them so much of the law of England, both common and statute law, as is "applicable to their condition", or is "adapted to their new situation".

in settled Colonies;

ii. In some Colonies express provision is made that English law as it exists at a certain fixed date is to be enforced. Thus in Tobago, by an Act of the Colonial Legislature passed in 1841, it was declared that such parts of the common law, and all statutes and parts of the public and general statute law of England, as are or shall be or become applicable and suitable to the circumstances and population of the Colony, should be in force in the Island.†

in Colonies by express enactment;

iii. By s. 5 of the Foreign Jurisdiction Act 1890, certain Acts of Parliament may be applied by Order in Council to the English communities in a country where consular jurisdiction has been established, "with or without any exceptions, adaptations, or modifications in the Order mentioned".

under the Foreign Jurisdiction Act;

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law in the Sovereign, and appellate jurisdiction – and all the laws connected with the exercise of the sovereign authority – must undergo alterations adapted to the change."

It is doubtful however whether those parts of the *dictum* which deal with the question now under consideration, were necessary to the decision of the case: the point being whether the English marriage law obtained at the Cape of Good Hope shortly after the surrender of the Colony by the Dutch.

† I quote this passage verbatim from Mr Tarring's "Law relating to the Colonies", p 6.

by Order in Council under the Act.

iv. By the Orders in Council which regulate the exercise of the jurisdiction by the Consular Courts, provision is generally expressly made for the administration of the law of England. For example the China Order in Council 1865, provides that the civil and criminal jurisdiction is "as far as circumstances admit" to be "exercised upon, and in conformity with the common law, the rules of equity, the statute law, and other law for the time being in force in and for England": it is further to be exercised with the same powers as are vested in the Courts of Justice and Justices of the Peace, and according to the same course of procedure and practice as obtains in the Courts and before the Justices. *

No reference to method of adaptation.

Now it will be seen that in one case only is there any reference to any process of adaptation—the application of Acts to the Consular Courts: but in the Orders in Council this is not done in any complete manner. There must therefore be some broad rule of adaptation. In the cases where a statute contains a section making it applicable to the Colonies or to foreign countries, the process is perfectly simple: it consists merely in substituting, by authority of the statute itself, for "Court" or "Judge" (for example) "Colonial Court" or "Consular Judge". In the applied Acts under the Foreign Jurisdiction Act the process is equally simple in most cases, though difficulties sometimes arise.

A rule of adaptation essential.

But in the absence of express direction by the Order in Council as to how the adaptation is to be made, the Court must act for itself when the question arises. We have here the germ of the grant of a discretion, which is based on the mere fact of the extension of the statutes, for it could not be carried out without it. But what in this case is the merest germ of a principle, becomes an integral part of the law itself, when we come to the more general applications of the whole body of English law. It grows, so to speak, out of the very terms used in the statement of the rule: for this law is to extend to the settled Colonies, for example, "so far as it is applicable to their condition" or, "as far as circumstances admit". This from its very nature involves an implied direction to the Court to exercise a discretion in enforcing the law. The exercise of the discretion may consist only of simple substitutions, as in the case of Acts expressly applied: or it may involve the decision of the larger question whether any

* *See* "Exterritoriality", p. 109.

given rule of common law, or any given statute, is applicable to the condition of the Colony, or whether the circumstances of the Colony admit of its application.

This is the inevitable condition of a rule so framed : as inevitable indeed as the rule itself. I do not propose to labour the authorities, which are for the most part illustrations of the rule which they do not expressly enunciate : but *Whicker* v. *Hume* may be referred to with advantage. The question was whether the Mortmain Act applied to a settled Colony such as New South Wales. The House of Lords decided that that Act having been wholly political in its object, and having been passed to prevent a public but local mischief, was not applicable to the Colony.

Case as to the application of the Mortmain Act to New South Wales. 7 H. L. Ca. 161.

One of the arguments used by Lord Cranworth was that the existence of certain conditions in the Act, which it would be impossible to comply with if the Act were in force in the Colony, shewed of itself that it was never intended that the Act should be enforced in the Colonies—such a detail as that the deed in question should be enrolled in Chancery within six months. In making use of this argument the learned Lord was in fact exercising the discretion which seemd to be given by the statute 9 George IV, c. 83, establishing Courts of Justice in the Colony. It was provided by s. 24 of this Act that—

> All rules and statutes in force within the realm of England at the time of the passing of this Act... shall be applied in the administration of justice in the Courts of New South Wales... so far as the same can be applied within the said Colony.

Ordinances were to be passed to settle doubtful cases, but in the meantime the Courts were " as often as any such doubts shall arise . to adjudge and decide as to the application of any such laws or statutes in the said Colony ".

Lord Chelmsford held that the laws referred to in such an Act could only be the laws for the administration of justice, and the questions to be decided by the Judges only those which arose incidentally in the course of a trial :—

> " It would be a most extraordinary thing that this provision should apply to those general laws to which the argument of the appellant seeks to apply it, and that the colonists of New South Wales should not at all know under what law they were living, until they had brought an action, and until in the course of that action they had ascertained by the determination of the Judges, that the paticular law about which they were ignorant, was really applicable to the Colony."

Lord Cranworth's argument shows that he did not read the limitation in the same sense, but took the direction to the Judges to be more general. But it is evident, quite apart from the facts of this case, that precisely the same doubt as to the law under which they are living must exist with regard to every law which is included in a general application of the whole body of English law to any Colony, and precisely the same examination must be made in order to settle the doubt in any given case.

The power given expressly in this case must exists independently from the nature of the application of the law.

For whether it be under the general rule, or under a special clause introducing the whole of the statute law of England which "is applicable to the condition" of a Colony, the Judges must, in any given case, decide the question whether the statute is applicable to the condition of the Colony: and in so doing they must exercise this same discretion, whether it is given to them expressly by statute or not.

Certain questions inevitably left to the Judges in deciding how a statute is to be applied.

And then, supposing that they decide that any given Act is applicable to any given Colony, and there are details incapable of being carried out in the Colony, it would seem to follow that they must have a discretion, which is inherent to their former discretionary power, to adapt or to omit as the case may require, to decide, as it is put in one of the rules, how far the "circumstances admit" of their enforcement, and to omit those of which the circumstances preclude the application. We have therefore already several distinct forms of discretion: to adapt the language where necessary to make it fit in with the new surroundings: to decide whether a rule or a statute is or is not applicable: to omit provisions which are in applicable to those surroundings. It seems clear that these are but examples of a general rule. The whole idea of applying a body of rules and statutes to circumstances for which they were not originally designed, can only rest on the broades, possible rule of adaptation to the circumstances, or otherwise the intention of the legislator would be entirely defeated. The doubt and uncertainty to which Lord Chelmsford alluded are inevitable: it is not within the power of the Legislature to fully appreciate the necessities of the new situation: impossible for it to foesee all the changes which they render necessary. Parliament is bound therefore to leave these questions to be decided by the Courts when they arise.

Different forms in which discretion to be exercised.

Some rule of adaptation inevitable.

I have in another work paraphrased the applied Acts under the Foreign Jurisdiction Act into language suitable to the Con-

sular Courts*: it is not necessary here to do more than point out that it was not always easy to make the necessary changes with certainty: one example of the nature of the question which may arise must however be given to complete the argument.

Illustration of inevitable change in application of an extended statute.

It seems fairly clear that there is nothing in the wording of the China Order in Council to exclude the Territorial Waters Act, 1878, from the statute law which is to be enforced by the Consular Courts in China. But the territorial waters, as defined in that Act, are those which surround the dominions of the King of England. To apply such a statute textually would involve an absurdity: the ordinary change would be to substitute the Emperor of China for the King of England: but even this involves anomalous consequences, for it could make the territorial waters of China the same breadth as those of England. It is suggested that the only possible way in which this statute could be applied to a foreign country, having due regard to the fundamental principles of consular jurisdiction, would be to hold the territorial waters to be those which are claimed by the Power from which the King obtains the right to exercise the jurisdiction.

It remains now to bring the argument involved in this long digression round to the point from which we started.

Is not the principle involved in the continuation of the foreign law in conquered or ceded Colonies, precisely the same as that involved in the application of the law of England to any given country or Colony?† Is it not inevitable that the same condition must be attached to the rule—that the foreign law is continued, but only so far as applicable or adapted to the new situation? that it is to be administered so far as circumstances admit, and that there must consequently be the same discretion in the Courts in enforcing it? In other words, does not this rule of adaptation apply in this case also? The answer seems to be that, if it did not apply, the texts of the law could become meaningless.

Application of the rule of adaptation to Colonies where foreign law continued.

The concrete example of the application of the French Codes in Mauritius will, I think, demonstrate the absolute necessity for such a rule. The alternatives are omission or adaptation: and, as we have already seen, both are but applications of the same

Example in application of French Codes in Mauritius.

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* *See* "Exterritoriality", Chapter VII—"The Applied Acts".

† In the *Mayor of Lyons* v. *East India Company* it is expressly stated that the decision of Sir W. Grant in *Attorney General* v. *Stewart* (a case also referring to the application of the Mortmain Act to the Colonies) warranted this exclusion. [1 Mo. P. C. at p. 271.] [2 Mer. 161.]

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Adaptation or omission inevitable.

principle : for somebody must decide whether any given provision of the foreign law is applicable or not, and if it is inapplicable, must assume the responsibility of not applying it in the face of the rule which has sanctioned the continuance of that law. And if the Judge decides that this rule is paramount, the only way in which he can enforce it is by adapting it to the circumstances, and bending the terms used to suit those circumstances.

The application of the French Codes in a Colony such as Mauritius is full of difficulty, but it is only illustrative of a difficulty which exists in all parts of the Empire where a foreign law is in force. I propose however to refer only to the more simple cases in which the rule of adaptation, which I have assumed to exist, must be exercised in one form or another : that is to say, either by alteration of the terms of the law, or by its omission.

There are throughout the Codes many references to "*France*" and "*Français*". Thus in the Civil Code—

Examples of articles of Civil Code referring to "*Français*".

Art. 15. Un Français pourra être traduit devant un tribunal de France, pour des obligations par lui contractées en pays étranger, même avec un étranger.

and

Art. 102. Le domicile de tout Français, quant a l'exercice de ses droits civils, est au lieu où il a son principal établissement.

and again

Art. 912. On ne pourra disposer au profit d'un étranger, que dans le cas où cet étranger pourrait disposer au profit d'un Français.

Putting all questions on one side as to how far these articles may have been superseded by local legislation, the fact that they have been at one time, and may still be, in force in the Colony, allows them to be taken as examples of the question which may at any time arise before the Courts.

So far as "*France*" is concerned, it must clearly be rendered "*Maurice.*" When Mauritius was a French Colony many of the French *Arrêtés* were promulgated in the Colonies *tels quels*. In the case of the Codes however "*les exceptions, additions et modifications exigées par les localités*" were "*réunies dans un acte supplémentaire qui serait annexé au Code*". But these were only fundamental changes, and so far as minor details were concerned, they must have been left to the Courts to interpret, much in the same way as in the case of our own Colonies. Even the French Courts would have been obliged to transform "*France*" into "*Maurice*".

Principle of adaptation necessary even by French Colonial Courts.

But what are we to do with "*un Français*", for of course it cannot be construed to mean "a Frenchman in Mauritius"? Now, either these articles must be considered as inapplicable to the Island, by reason of the change in the sovereignty: in which case, the Court would exercise its discretion of omission, and there would be many gaps left in the legislation, in so far as they had not been covered by subsequent ordinances in the Colony: or some way out of the difficulty must be discovered. There are two possible adaptations: the first, altering "*un Français*" into "*un Anglais*"; the other, altering it into "*un Mauricien Anglais*". Neither alteration is very satisfactory: but though the first is almost impossible, the second is inevitable unless the articles are omitted altogether.

Alternatives are adaptation or omission.

But then, if some change must be made in these articles, why may it not be made in the articles of the Civil Code‡ which deal with nationality? The result, if this is not done, would be that the nationality of persons born in Mauritius would be governed by French law. The alternative must be adopted in this case: the Court must exercise its discretion of omission, and treat the articles as eliminated, because they are unsuited to the condition of the inhabitants of the Colony. Unsuited, for by the cession of the Island it became part of the dominions of the Crown of England, and the allegiance to the King thereupon attached to all who were, or who might be thereafter, within that part of the dominions. In other words, the rule of adaptation is obligatory in this case. It is submitted that this argument is sound: and if sound, it leads inevitably to the conclusion that nationality at common law extends to all the dominions.

Application of argument to articles of Code dealing with nationality.

‡ [see Appendix to this Part.]

Rule of adaptation requires omission of these articles.

NOTE

on the construction of the French Codes in British Colonies.

The question of adaptation in connection with the French Codes must sooner or later engage the serious attention of the Courts. The transpositions which I have suggested in the text are at the best rough and ready expedients, and proceed on the assumption that the articles are, so far as they have not been touched by local or imperial legislation, in force. But there is an underlying question, which is not lightly to be disposed of—Do any of what may be called the "national" articles of the Code apply to British subjects in the Colony? The Code is the "*Code Civil*

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The Application of the Statutory Rules to the Colonies.

Application of statutes of nationality to Colonies generally.

When we pass to the statutes dealing with nationality the question works out in more simple fashion, for statutes apply to the Colonies when it is so expressed, or when the intention is clearly indicated. This is quite independent of the question whether they are among the statutes which are applied bodily to settled Colonies.

NOTE on construction French Codes in British Colonies, *contd.*

des Français " : and after having disposed of a few preliminary matters, it proclaims in art. 8—" *Tout Français jouira des droits civils* ", and then it immediately proceeds to explain who are Frenchmen : " *sont Français...* " The nationality articles referred to follow. ‡

‡ *See* Appendix to this Part.

This in itself furnishes an argument against the applicability of these articles to the nationality of persons born in a British Colony who by the fact of such birth are British subjects.

It may well be that the same considerations go to show the inapplicability of so much of the Codes which is specially designed for " *les Français* ". The few articles given in the text are but samples of many which are scattered through the Codes, and which are radically different from the corresponding provisions of our own law, essentially a non-national law. Some of them have been superseded by local legislation : others by imperial legislation applicable to the Colonies ; and in process of time all may ultimately vanish. Meanwhile many remain.

It is unnecessary to labour the point, but in order to emphasize the difficulty of the subject, two other examples may be given.

Art. 14. L'étranger, même non residant en France, pourra être cité devant les tribunaux français, pour l'exécution des obligations par lui contractées en France avec un Français : il pourra être traduit devant les tribunaux de France, pour les obligations par lui contractées en pays étrangers envers les Français.

This is typical of the articles which are superseded by local legislation : this special question being now governed by the " Absent Defendants Ordinance, 1898."

Again

Art. 999. Un Français qui se trouvera en pays étranger, pourra faire ses dispositions testamentaires par acte sous signature privée, ainsi qu'il est prescrit en l'article 970, ou par acte authentique, avec les formes usitées dans le lieu ou cet acte sera passé.

The question how far this article is applicable to Mauritian subjects would be further complicated by the question whether the Wills Act, 1861, extends to the Colonies.

Expressions used indicating application to the Colonies.

The nationality statutes refer to persons "born out of the ligeance of England", and "without the ligeance of the King" [25 Edw. III] : "born out of the ligeance of Her Majesty, Her Heirs and Successors" [7 Anne c. 6] : "born out of the ligeance of the Crown of England or of Great Britain" [4 Geo. II, c. 21, and 13 Geo. III, c. 21].

Result of application.

The Colonies are within the ligeance ; and therefore, both expressly, as well as by manifest intention, all these statutes apply to the Colonies, in the same way as they do to the United Kingdom : that is to say, persons born out of the dominions of fathers who are natural-born subjects by the common law, or under 4 Geo. II, c. 21, are British subjects throughout the dominions. Birth in a Colony gives British nationality by birthright, and not under the statutes. There is express legislation applicable to all Colonies ; the statutes therefore repeal or override any local law of nationality which may be in existence in a conquered or ceded Colony. This must in no way however be taken as an admission that the principle which governs the common law rule does not also apply to these statutes. If that rule is sound, it seems abundantly clear that, quite apart from any question of express application, these statutes, attaching as they do to the Sovereign, apply of their own force throughout the whole of the dominions, whether settled, ceded, or conquered.*

Colonies have no power to legislate on nationality.

It follows inevitably from what has been said, that the Colonies can have no power of legislation with reference to nationality. They cannot alter the common law rule, nor can they extend or curtail nationality by statute, even though such legislation professed to be limited in its effect to the Colony in which it was passed†.

* The practical consequence of this extension of the rules of nationality to the Colonies is apt to be overlooked by the persons interested. A Chinaman born in Hong Kong, though of Cantonese parents, is a British subject throughout the Empire, and would not, for the sake of any privileges which the status might confer upon him, require to be naturalized in the Straits Settlements or Mauritius. But their Chinese parentage is apt to make such persons forget the place of their birth, and the privileges which it gives them : for applications by such "Chinamen" to be naturalized in Mauritius are occasionally made. And there must be many others, born in Canton of fathers born in Hong Kong, who might claim to be British subjects in the Colonies under the statute of George II : and others, again, who would come within the statute of George III.

† In the New South Wales Election Law, 56 Vict. No. 38, s. 4, there is the following definition—"Natural-born subject", means a male person born in His Majesty's dominions, as well as the son of a father or mother so born. This definition is not only limited to men, but ignores the statute of George III ; it clearly cannot apply beyond the purpose of the Act in which it is introduced, and cannot be called a nationality statute.

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"Ligeance" having been so much referred to, use of the word "dominions" in the definition, instead of "ligeance", requires explanation. Its introduction is necessary, in order to show that the law of nationality does not apply to countries under British protection. A Protectorate, if it is a foreign country such as Zanzibar, does not lose its national character by putting itself under British protection: and neither the common law nor the statutes apply to make persons born there British subjects. Such countries, for the purposes of the statutes, would be deemed to be abroad. Where a tract of country is governed by charter, and is the property of a company, the sovereignty is vested in the Crown, and persons born within the Chartered Company's territoritory are British subjects.‡

Rule as to persons born in Protectorates;

in territory owned by Chartered Companies;

So, in the case of territory belonging to a private individual, he holds subject to the sovereignty of the King, and therefore persons born in the territory are British subjects.

in territory held by private individual;

There is not much difficulty in appreciating the law so far as these tracts of country are concerned, but the importance of not using the term "ligeance" in the definition is very marked when we come to deal with the countries in which the King exercises foreign jurisdiction: for here, in some sense, it might be argued that British subjects being under the protection of their own Sovereign are also within his ligeance§. They are however only under his protection as expressly defined. Foreign jurisdiction is, as its name professes, essentially a question of exercising jurisdiction. It is the jurisdiction which is defined in the Order in

in countries where foreign jurisdiction is exercised.

[1 Mo. P. C. 175.]

‡The position of the East India Company with regard, first to the established native Government, and afterwards to the Crown of England, is thus stated in the judgment in *Mayor of Lyons* v. *East India Company*:—

"Enough has been said to show that the settlement of the Company in Bengal was effected by leave of a regularly established Government, in possession of the country, invested with the rights of sovereignty, and exercising its powers: that by permission of that Government Calcutta was founded, and the factory fortified, in a district purchased from the owners of the soil, by permission of that Government, as subjects owing obedience, as tenants rendering rent, and even as officers exercising, by delegation, a part of the administrative authority. At what precise time, and by what steps, they exchanged the character of subjects for that of Sovereign, or rather acquired by themselves, or with the help of the Crown, and for the Crown, the rights of sovereignty, cannot be ascertained: the sovereignty has long since been vested in the Crown, and though it was (at) first recognised in terms by the Legislature in 1643, the statute 53 Geo. III, c. 155, s. 95, is declaratory, and refers to the sovereignty as "undoubted", and as residing in the Crown".

§A curious question arises in connection with this subject, as to the proper form of the indictment in prosecutions before the Consular Courts: whether the offence is accurately described as being "against the peace of our Sovereign Lord the King". The offender has surely broken the "peace" of the Emperor of China; the power of punishing such offence, when committed by British subjects, being under the treaty ceded by the Emperor to the King. see "Exterritoriality", p. 195.

Council that is to be exercised " in conformity with the common law and the statute law ". This could not be held in any way to extend the law of nationality to persons born in the country where the jurisdiction is exercised. Birth in China, for example, does not make the person a British subject ; and persons born in China would not be British subjects unless they fell within the statutory rules applicable to them and their parents.

But though the law which governs nationality in the Colonies is the same throughout the Empire, it does not follow that the rights of all subjects are everywhere identical. Even in the case of common law rights, generally presumed to be inherent to the quality of British subject, we have seen that in conquered or ceded Colonies they do not exist, and that British subjects therein—and not necessarily born therein—are under another code of rights altogether. And those which depend on statute do not apply to the Colonies without express reference. Even in the case of Magna Carta and the Habeas Corpus Act the question whether the legislation extends to the Colonies must be decided on the same principles as any other statute.

Rights of British subjects not uniform in the Empire.

The question whether the charters of English liberty apply to foreigners within the realm has already been discussed. Another question of equal interest arises in connection with them : Do they apply to British subjects in the Colonies ? The former difficulty arises from the frequent use of the word " subject ", the present from the use of the word " realm ".

[*cf.* p. 174.]

The charters of liberty probably extend to subjects in the Colonies.

The Bill of Rights may be taken as a typical example ; and it will be useful to examine the question of its effect in the Colonies. Having set out their grievances, the Lords and Commons vindicated and asserted their ancient rights and liberties : among others, " that it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal ". But in s. 6 they pray that it may be declared and enacted, that all and singular the rights and liberties asserted are the " true ancient and indubitable rights and liberties of the people of this kingdom " : and by s. 11, this was declared and enacted to be " the law of this realm for ever ". I pointed out at the commencement of this chapter that it is probable that "realm" may be construed "dominions"; and this seems even more than probable in a statute which expressly recognised William

The Bill of Rights.

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and Mary to be King and Queen of England, France and Ireland, and the dominions thereunto belonging. I suggest, though not without hesitation, that these old statutes do apply to British subjects in the Colonies.

COLONIAL NATIONALITY.

The doctrines of nationality in their application to the Colonies.

The doctrine that a person born in any part of the dominions is a British subject, is the doctrine of British nationality against the world. But "Greater Britain" is made up of innumerable fragments, each of which has its own legislative authority, or an authority competent to make laws for it independently of Parliament: each of which has its own institutions, and each of which has (for want of a better word) its own nationality, and its sentiment of race. With the creation of any legislative authority, there must also be a definition of its legislative jurisdiction. On paper no very difficult matter: the formula "to pass laws for the peace, order, and good government of the Colony", is for all purposes amply expressive.

What consequences attach to colonial origin.

But men pass from place to place, from Colony to Colony, and again the vexed question arises—Is a man competely exempt from the laws of a Colony in which he is not actually present? or, putting it in another form: To the law of what Colony is a man normally subject? or again: What, if any, are the practical consequences flowing from Colonial origin? If British subjects throughout the Empire were, as French subjects are throughout their Empire, governed by the same laws there would be little difficulty: but, first, because of the different systems of laws which prevail in the Colonies; and secondly, because both as regards the Mother Country and as between the Colonies themselves, they are for all practical purposes of legislation and administration of justice, foreign countries, it is manifest that precisely the same international questions must often arise between the Colonies as arise between foreign countries. This justifies the use of some term to indicate the legal position of a person of colonial origin, with regard to that Colony—there is no other than "colonial nationality"; although the laws of domicil and of usual residence, as in the case of foreign countries, have gone far to reduce the number of questions dependent on this nationality

Term "colonial nationality" essential.

This is not a very satisfactory way of stating the position

from an imperial point of view, but it is a fact which the law has to reckon with: even Scotland and Ireland stand in a similar predicament.

Importance of the question limited by the absence of extra-territorial legislation by Colonies;

One complication is removed by the fact that Colonial Legislatures possess only delegated, and not inherent, powers: and these are strictly limited to the Colony for which they legislate. They cannot pass extra-territorial laws, even with regard to those who stand in the same relation to them as other persons do to their own national Legislature. * The reason why the question has not attracted much attention is that the basis of our legislation is for the most part territorial and impersonal, and not national.

but many difficulties removed by impersonal nature of British legislation.

Rule of construction of criminal laws.

To such an extent is this principle carried, that the same words in a colonial statute will receive a different interpretation from that which is given to them in the Imperial Act from which it is copied. Thus, the words "any person", with which sections of the criminal statutes begin, mean "any person within the realm", and if any section has an extra-territorial operation they mean "any British subject beyond the realm". In colonial legislation the same words also mean "any person within the Colony": but if any section were to profess to operate extra-territorially, even with regard to persons who stand in the quasi-relation of subjects, it would be held to be *ultra vires*. A Colony cannot therefore legislate for its colonists abroad.

But difficulties may still arise owing to different systems of law in force in the Empire.

But although many difficulties are thus removed, that question of the different systems of laws in the Empire comes again to the front, and raises the old problem in another form. The articles of the French Codes to which reference has already been made, will serve as the best example of the difficulties which may arise in Colonies where a foreign common law obtains.

With regard to the articles which refer to "*un Français*", it has been suggested that the Courts would most probably construe the words to mean "*un Mauricien Anglais*", or shortly, "*un Mauricien*". But who are they? and how is their status of "Mauritian" or "Mauritian subject of the King" to be established? Who are Canadians? Who Barbadians? Who Seychellois? and so throughout the Empire.

* An apparent exception to this rule is to be found in the judgement of the Privy Council in *Ashbury* v. *Ellis*, in which it was held that a Colonial Legislature could, within the meaning of the words "peace, order, and good government" of the Colony, pass laws dealing with absent defendants. [L. R. 1893, A. C. 339.]

Colonial nationality must depend on the common law.

It seems impossible, in interpreting these terms, not to have recourse to the common law. The law which determines who are British subjects as against other nations by the *jus soli*, would naturally determine the respective classes of British subjects, as between themselves, by the same rule: and it seems fairly certain that if any question arose which depended on this colonial nationality, the Courts would apply the principle of the common law: holding, for example, persons born in Mauritius to be Mauritians. Yet, although the Courts would probably apply the common law rule of nationality, it is far from certain that they would extend the analogy and apply the statutory rules. For this simple reason, that the *jus soli* applied throughout the different parts of the Empire would produce no conflicts: whereas the statutes which depend on the *jus sanguinis*, would inevitably lead to the same conflicts as between the Colonies *inter se*, as now result between two foreign countries whose laws are based on the different principles.

But it is questionable whether the Courts would appy the statutory rules.

This would perhaps run contrary to the prevalent instinct, as people, for social purposes, do not adhere to the rigid interpretation of the statutes in claiming the perpetuation of the family nationality. The son of a Canadian calls himself Canadian wherever he or his father may have been born.

This appears to be only the sentimental view of the matter: yet there are certain practical considerations which do in fact depend on colonial origin; the question, for exemple, of repatriation of paupers and distressed seamen.

Repatriation of paupers from one Colony to another.

Neither the United Kingdom, nor any Colony, is expected to maintain paupers who do not properly belong to it: and if a pauper is stranded in any part of the dominions to which he does not properly belong, power is given to the Governor to re-patriate him to that part to which he does properly belong, the charge for expenses being borne by that Colony or the United Kingdom, as the case may be. The expression "properly belongs" is used for convenience in stating the rule: so far as legislation is concerned, I think I am right in saying that the justification does not depend on the law of the ex-patriating Colony, but on that of the Colony to which the pauper is ex-patriated: the usual form of the legislation being an authority to the Colonial Treasury to pay the bill.

For the sake of illustration, the Mauritius law may be re-

ferred to. There is no law authorising the Governor to re-patriate British paupers: but this does not prevent him from doing so when necessary. By way of example, the payment of the costs of re-patriation of Mauritians to Mauritius is authorised by Ordinance No. 17 of 1902, art. 18 of which is as follows:—

> Whenever the British Consul in any foreign country, or the Governor of any other British Colony, shall have paid the expenses of sending back to Mauritius any distressed person, a native of Mauritius or any of its dependencies, or naturalized as a British subject in this Colony, such expenses shall be repaid by the Treasury, subject to the subsequent recovery of such expenses either from the person so sent back or from any relative liable in law to support such person.

The word used is "native" of Mauritius, and it is difficult to see how the idea could have been otherwise expressed. It may be fairly assumed that corresponding provisions in corresponding terms are to be found in the legislation of other Colonies.

Rule of re-patriation depends on birth as between Colonies.

Now if any question arose as between two Colonies as to their respective liabilities, or as to whether a pauper had been rightly repatriated to any given Colony, the question we are now considering would have to be decided. A native is a person born in any country: it is therefore synonymous with a subject by common law. But the following cases might also arise. Where a person was born in Mauritius of a father who was born in Natal, to which Colony should he be properly repatriated? It is suggested that the question would be settled by the common law doctrine of birth, and not by reference to the principle of the statute of George II. Yet the word "native" does not fully express the liability of the Colony, for persons born in a foreign country of persons born in Mauritius would, it is also suggested, be properly re-patriated to that Colony. This however results from the principle already discussed, that the statutes of nationality apply to the Colonies. Naturalized persons are also included. The question whether this is necessary raises the whole question of the meaning of colonial naturalization.

But it may extend to subjects by statute re-patriated from abroad.

Repatriation of distressed sailors.

The re-patriation of distressed sailors is expressly authorised by the Merchant Shipping Act, 1894.

57 & 58 Vict. c. 60, s. 191 (1), 4th para.

> For the purpose of providing a distressed seaman with a passage home, the authority shall put him on board a British ship bound either to the United Kingdom or to the British possession to which the seaman belongs (as the case may require), which is in want of men to make up its complement: or, if there is no such ship, then the authority shall

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provide the seaman with a passage home as soon as possible in any ship, British or foreign, bound as aforesaid.

In Mauritius the provisions of the articles of the Poor Law already set out as to payment of charges, are extended* to this provision of the Merchant Shipping Act. The term used in the Act is "belongs": and it is used in connection with sending the sailors "home". It is possible that this question is to be decided irrespective of nationality or colonial origin: but I do not venture to make any suggestion, as both with regard to paupers and sailors, even the simpler issues of the subject are, as we have seen, complicated.

Expenses of burial of British subjects abroad; and of maintenance and re-patriation of lunatics.

Similar questions arise in connection with the burial of pauper British subjects, and the expenses incurred by British Consuls in that behalf; and also in connection with the expenses of maintenance and re-patriation of pauper lunatics.

Chapter XV.

Of Colonial Naturalization and Colonial Denization.

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The question discussed in the last chapter leads naturally to the consideration of the power of Colonial Legislatures to deal with naturalization. The Report of the Inter-departmental Committee gives the 35th year of Charles II as a known date for such a colonial ordinance, and suggests the possibility of even earlier legislation. It must therefore have been assumed, during a very long period, that laws dealing with naturalization fell within the meaning of the words "peace, order, and good government", by which legislative authority is vested in Colonial Legislatures.

Earliest extant colonial Naturalization Ordinance.

In many Colonies the early legislation would appear to have been special to the individuals naturalized. But this cannot have been the general rule, for the law of Jamaica, the earliest extant law above referred to, passed in 1683, "for encouraging the settlement of the Island", gave general powers to the Governor to issue instruments of naturalization under the broad seal of the Colony.

Colonial naturalization was not however touched by Parlia-

* By Ordinance No. 8 of 1880, art. 1.

ment till 1847, when an *"Act for the naturalization of aliens"* was passed, with the express object of settling doubts which had arisen as to the validity of these Colonial laws. It provided also for the due exercise of the power of naturalizing for the future, and further declared that the Act of 1844 did not apply to the Colonies.

Imperial Act of 1847.

The preamble recites that provision had been made by the Legislatures of divers Colonies "for imparting to divers aliens there resident the privileges or some of the privileges of naturalization to be exercised and enjoyed within the limits of such Colonies", and that doubts had arisen as to the competency of the Legislatures to pass such laws; s. 1 then validates them in general terms as follows:—

10 & 11 Vict. c. 83, s. 1.

All Acts, statutes, and ordinances heretofore made and enacted by the Legislatures of any of Her Majesty's Colonies and Possessions abroad for imparting to any person or persons the privileges or any of the privileges of naturalization, to be by such person or persons exercised and enjoyed within the respective limits of such Colonies or Possessions respectively, shall within such limits have and be taken and reputed to have had from the time of the enactment thereof respectively, all such and the same force and effect as doth by law belong to any other law, statute, or ordinance made or enacted by any such respective Legislatures.

validating existing colonial ordinances.

There is an initial difficulty in understanding this section. It refers to colonial ordinances passed for imparting the privileges of naturalization "to any person or persons". This would appear at first sight to relate only to special naturalization ordinances: but as general ordinances were in existence at the time, and as the same doubts must have arisen as to their validity, they must have been included in the scope of the validation contemplated by this Act. The words "for imparting to any person" must therefore be understood to mean "for regulating the grant to any person". The point is of importance, because, prior to 1844, there was no general legislation in the United Kingdom.

Section must apply to general as well as special ordinances.

Although the Act was, as it professed to be, a validating Act, and was couched in very broad terms, yet it was so drawn as to be at the same time an invalidating Act. It laid down expressly what the provisions of the colonial ordinances must be in order that the validation should apply to them: if there were any which did not satisfy this test, they were outside the Act, and must have been invalidated.

The test was, that the privileges of naturalization should

profess to have been granted for exercise and enjoyment within the limits of the Colony alone. It is not clear what the doubts were which led to the passing of the Act: they may have been, as the preamble recites, merely as to whether Colonial Legislatures had any power of naturalization at all—if so, it had taken a long time for the doubts to arise: or, it may be, that some Colonies had assumed a wider power, and had granted or professed to grant an unrestricted naturalization, conferring British nationality generally—though of this there do not appear to be any traces: or, it may be, that as in later times, the limited effect of the grants which had been made were not understood by the grantees, and claims to be British subjects beyond the granting Colony were made, which it was thought advisable to stop for the future by express declaration of Parliament.

Nature of doubts examined.

Nevertheless it is important to realise what the doubt really was; why legislation, which appears to be essentially local, should have been thought to be *ultra vires* the Colonial Parliaments: for on this depends the understanding of the real meaning of the provision of the law, which was not only applied in 1847 to the validation of then existing colonial legislation, but was enacted in identical terms for the future, and was repeated, with verbal alterations only, in 1870.

The recital in the preamble shows that the colonial legislation had apparently kept within the principle which the Imperial Parliament sanctioned for the future. There does not appear to have been any patent evasion of constitutional principles; the doubt which existed, and which was resolved in 1847, must have been latent, and it evidently corresponds with the necessity, since and still recognised, for the Parliamentary sanction to colonial naturalization, even hedged in with limitations as it is.

The sections of the two Acts are as follows:—

10 & 11 Vict. c. 83, s. 2.

Rule established by Act of 1847

All laws, statutes, and ordinances which shall hereafter be made by the Legislatures of any of Her Majesty's Colonies or Possessions abroad for imparting to any person or persons the privileges or any of the privileges of naturalization, to be by any such person or persons exercised or enjoyed within the limits of any such Colonies and Possessions respectively, shall within such limits have the force and authority of law, any law, statute, or usage to the contrary in anywise notwithstanding: provided nevertheless, that all such laws, statutes, and ordinances shall be made and enacted in such manner and form, and subject to and in conformity with all such rules as now are or hereafter may be in force in

respect of other laws, statutes, or ordinances enacted by any such Legislatures respectively, and shall and may be confirmed or disallowed by Her Majesty in such and the same manner, and subject to the same rules and regulations as extend or as shall hereafter extend to the confirmation or disallowance of any other such laws, statutes, or ordinances.

33 & 34 Vict. c. 14, s. 16.

All laws, statutes, and ordinances which may be duly made by the Legislature of any British Possession for imparting to any person the privileges or any of the privileges of naturalization, to be enjoyed by such person within the limits of such Possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that Possession.

by Act of 1870.

There is in the first place, a meaning which lies on the surface of these words, which is not only their commonly accepted meaning, but which also accurately represents the law as it applies to the most frequently recurring incidents resulting from colonial naturalization. The privileges conferred by it are to be enjoyed only when the person is within the limits of the Colony: when he is beyond the limits of the Colony he ceases to enjoy them. This corresponds with what has been called the narrow construction of s. 7 of the Act of 1870, which limits the effect of the British certificate granted under it to the United Kingdom.

Commonly accepted meaning.

Circular despatches have been issued from time to time, laying down this principle in unmistakeable terms. They deal with the very practical question of the "good offices and assistance of His Majesty's Representatives abroad", and point out that persons naturalized in the Colonies are British colonial subjects within that Colony, and are only entitled to those good offices beyond the limits of the Colony "as a matter of courtesy". This is inserted in the passports; special instructions are also given that care is to be exercised, "to avoid any appearance of claiming to protect such persons as against the laws of their country of origin".

Colonial Office despatches. [see Appendix to this Part.]

Limiting the enquiry for the moment to what way be called the superficial meaning of the section, it appears to be no more than an application to naturalization of the constitutional principles which govern colonial legislation generally.

Examination of superficial meaning of s. 16.

If however we assume that "naturalization" connotes the granting of the status of "British subject" on the person naturalized, the result of colonial naturalization would be to confer

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on the person the status of "subject" for which he would claim universal recognition wherever he might be.

Territorial nature of colonial legislation.

But the powers of Colonial Legislatures are strictly territorial: not only can they not legislate for persons not within their limits, but they cannot confer rights to be exercised, nor impose duties to be performed, outside those limits. It follows therefore that they cannot invest a person with a status which would inevitably carry with it rights and duties beyond the Colony: such a status as that of British subject is. If therefore they have any right to naturalize at all, the grant of the privilege must be couched in such language as to leave no doubt that it is subject to this fundamental principle.

Yet if any colonial ordinance had done more than this, had professed to give an effect to its certificate beyond the limits of the Colony, there could have been no doubt at all, but only certainty, that the ordinance was *ultra vires*. The doubt seems now to be taking definite shape: Is it possible that the status of subject can be limited strictly to one part of the dominions?

Examples of colonial provisions.

It will be convenient now to see how Colonial Legislatures have dealt with the subject.

Law of Jamaica, 1638.

By the law of Jamaica*, foreigners who were already settled in the island, or who intended to settle and plant in it, might be "to all intents and purposes fully and completely naturalized"; and they were to

> have and enjoy to them and their heirs the same immunities and rights of and unto the laws and privileges of this Island, in as full and ample manner as any of His Majesty's natural-born subjects have or enjoy within the same, or as if they themselves had been born within any of His Majesty's realms or dominions.

Law of Bahamas, 1848.

The law of Bahamas, passed in 1848, immediately after the Act of 11 & 12 Victoria, provided that on obtaining the certificate and taking the oath of allegiance.

> every alien now residing in, or who shall hereafter come to reside in any part of this Colony, shall enjoy within the Colony, all the rights and capacities which a natural-born subject of the United Kingdom can enjoy, or transmit within the said Colony.

* For the purpose of illustrating this chapter by references to colonial legislation I have availed myself of the collection given in the Appendix to the Report of the Inter-departmental Committee. I had already obtained through the courtesy of many Law Officers copies of colonial ordinances, but the collection I had thus made was unfortunately not complete. I have therefore been compelled to have recourse to what has been published by the Committee: but to as limited an extent as possible; for, although it is published in a Blue Book, and therefore for the use of the public,

The law of the Cape of Good Hope, passed in 1883, is in the following terms—

Law of Cape of Good Hope, 1883.

"An alien to whom letters of naturalization have been granted shall in this Colony be entitled to all political and other rights, powers and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in this Colony.

These ordinances were passed respectively during what may be called the three epochs of colonial naturalization, and the same idea is expressed in each of them—the grant to an alien of the privileges of a British subject to be enjoyed within the Colony.

The question to be considered: why an Imperial Act was necessary.

For all time therefore, since naturalization has been granted in the Colonies, the language used, so far as the area of enjoyment is concerned, seems to have been identical, and it corresponds with that used in the Imperial Act itself. What is there then, in a grant so essentially limited to the Colony, which violates constitutional principles? It may be that, limit the grant as strictly as words can bind, there is still some inherent quality in the consequences on which the words of limitation cannot act: perhaps, in spite of every endeavour, the consequences which result from the status of British subject cannot be limited to the Colony. The question, whether the grant of the privileges of a British subject is equivalent to conferring the status of British subject, will be considered hereafter.

The enquiry is inevitably twofold, and must be directed first, to the language of s. 16 of the Act of 1870, which requires careful study; and secondly, to the broad principles which underlie colonial legislation: in a subsequent chapter I propose to examine a concrete example of this legislation.

I now proceed to analyse the language of s. 16.

General as well as special naturalization ordinances included.

"*For imparting to any person*":—These words have been repeated from the Act of 1847. In many Colonies the general naturalization ordinances were passed after 1870: the suggestion already made, that the words must be interpreted so as to cover the general as well as the special ordinances, may therefore be said to be their generally received construction. In any future Naturalization Act it is probable that the meaning will be more clearly expressed.

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yet in fact it is the result of the labours of others who have worked in the same field. A comparative study of the laws of the different Colonies on the many points involved in the subject, was originally included in the scheme of this work.

"The privileges or any of the privileges of naturalization":—

Meaning of "privileges of naturalization" examined.

"Naturalization" having no abstract meaning, and the words being used in an English statute, they must presumably mean "the privileges of naturalization" as understood or defined by that statute. But these have varied under English law at different times: and it therefore becomes a question how far the privileges conveyed by the colonial grant have been affected by these variations.

Prior to the Act of Settlement, statutes of naturalization accorded full civil and political rights. That Act deprived naturalization, and also denization, of what was then their sting, the admission of *quondam* aliens to offices of trust under the Crown, and the grant to them of lands by the Crown. Doubts having arisen whether this was intended to be retrospective, the Act 1 George I, c. 4 was passed, declaring this not to have been the intention: but at the same time the second section provided that no person should thereafter be naturalized, unless in the bill for that purpose there was a special clause inserted, the effect of which was to carry out and enforce the limitations on naturalization which had been imposed by the Act of Settlement. This condition was removed by s. 2 of the Act of 1847, the Act of George I being repealed.

[*see* Appendix to this Part.]

Variations in the privileges under English law.

The different stages through which English naturalization has passed are therefore the following: prior to 1700 the grant was unlimited: from 1700 to 1844 the grant of the higher political privileges was forbidden. In 1844 the restriction was removed so far as special naturalizing statutes were concerned, but it was maintained in the Act which dealt generally with naturalization: in 1870 it finally disappeared.

Colonial powers must have been subject to corresponding variations.

Turning now to colonial legislation, when in 1847 power was granted to impart the privileges of naturalization, it must have referred to the statutory definition of naturalization and its privileges which was then in force. It is hardly possible to suppose that the Colonial Legislatures could, thenceforward, have granted by their naturalization larger privileges in the Colony than were granted in the United Kingdom by a certificate under the English Act. The "privileges of naturalization" then were those defined by s. 6 of the Act.

[*cf.* p. 212.]

There is no need to fall back upon any rule of adaptation to

determine what the corresponding powers of the Colonial Legislatures were; for the words "within the limits of the Colony" indicate with sufficient clearness how these privileges were to be interpreted with regard to the Colonies. They would have been "all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit" in the Colony. The special exception with regard to the Privy Council and the Houses of Parliament would naturally have been transformed into corresponding exceptions with regard to the Colonial Councils and Parliaments: and the power of making further exceptions would have been exercised by the Governor instead of the Secretary of State.

Colonial powers between 1847 and 1870.

And so under the Act of 1870, the "privileges of naturalization" must be those which are laid down by the Act itself. The powers of the Colonial Legislatures would therefore be to confer on the naturalized alien "all political and other rights powers and privileges to which a natural-born British subject is entitled" in the Colony. The exception of the political rights being now removed from the grant in the United Kingdom, it follows that the corresponding exceptions to the colonial grant must also be removed.

Colonial powers since 1870.

But what was meant by the "privileges of naturalization" when it was used in the validating section of the Act of 1847? General legislation had then only been in existence in the United Kingdom for three years; it had existed in the Colonies for a century and a half. There had been, however, a statutory limitation in the United Kingdom since 1700, applicable to special Naturalization Acts: and the Act of 1847, as we have seen, treats the general and the special ordinances then in existence in the Colonies on the same footing. It seems to follow inevitably that the "privileges of naturalization" as used in s. 1, must be privileges corresponding with those which existed in the United Kingdom. From which it would result that colonial legislation, prior to 1700, might have been unlimited: but that after that date political rights could not have been granted.

Colonial powers prior to 1700, and between 1700 and 1847.

The suggestion already made that the Act of 1847 was practically an invalidating as well as a validating Act is now explained: for if any colonial ordinance did at that time grant full political privileges to naturalized persons it professed to grant within the Colony what Parliament could not grant in the United

[*cf.* p. 227.]

Kingdom. Whether or not this was one of the doubts which led to the Act being passed is not very material : it would appear to have been one of its inevitable consequences.

Colonies may still pass special naturalization ordinances.

The Act of 1844 did not deprive Parliament of its right to grant naturalization by Act in individual cases : on the contrary, it extended the right by removing the restrictions imposed by the Act of George I on the scope of such legislation. It would seem that the power of Colonial Legislatures to grant naturalization in special cases by ordinance still subsists : only it must be exercised subject to the same limitation as the general legislation. In some Colonies, such as St. Lucia, there is as yet no general Act.

Meaning of "enjoyment" of privileges.

Within the " enjoyment " of " privileges " must also be included being " subject to all obligations to which a natural-born British subject is subject " in the Colony : probably this idea in subsequent legislation will be more felicitously expressed.

NOTE

on the meaning of " Privileges of Naturalization ".

I put forward this view with diffidence, and more as a suggestion as to the meaning of the words, than as an argument. Yet, if it is the proper construction of the Act of 1847, it was not so understood in many of the Colonies, notably the Australian : for the unlimited rights of the British subject were granted in many of these Colonies, and nearly all the laws were passed in the second period, that is, between 1847 and 1870.

It by no means follows, however, that the question whether the higher political rights are in fact enjoyed by naturalized subjects in a Colony depends entirely on its Naturalization Act : the question is more usually dealt with in the Constitution of the Colony, or in its Electoral Acts. And, of course, it does not necessary follow that every British subject enjoys political privileges in a Colony without some qualification of residence. This however is a question of degree, the point being the admission of the naturalized alien into the community on the same footing as the British subject.

So far as the naturalization laws are concerned, it seems as if they had gone beyond the limit in granting full rights : but it would be going too far to say that they are now *ultra vires*. The question would probably be now decided by reference to s. 16 of the Act of 1870, and if they ever were *ultra vires*, this section will have operated to revive them. The question has therefore ceased to be a practical one. Yet it is inte-

"To be enjoyed by such person within the limits of such possession" :—

The fundamental principle of colonial naturalization lies in these words, and it is now essential to determine what is the exact form in which it should be expressed. There is a slight transposition of words in s. 16, which is not unimportant. In the Act of 1847, the privileges of naturalization were "to be by such persons enjoyed within the limits of the possession": in the Act of 1870, the privileges are "to be enjoyed by such persons within the limits of the possession". The preamble of the earlier Act show clearly that privileges under it were only to be enjoyed by resident aliens: the meaning of the two provisions is therefore identical. But the transposition emphasises the fact that the words "within the limits of the possession" relate to the person, and not necessarily to the enjoyment of the privileges, or to the privileges themselves.

Variation in language between s. 16 of Act of 1870 and s. 2 of Act of 1840.

The primary principle of colonial legislation is that it is essentially territorial in its application: that is, that it applies only to persons within the Colony. The secondary principle is that it is also territorial as to the rights conferred, and as to the duties imposed. The condition of s. 16, that the privileges are conferred on persons within the limits of the Colony, corresponds with the primary principle; and the colonial laws which we have already examined coincide in this.

Fundamental principles of colonial legislation.

By the law of Jamaica the naturalized alien in the Colony is to enjoy the same rights as natural-born subjects within the same: by the law of Bahamas, the rights are conferred on aliens residing in the Colony: and by the law of the Cape of Good Hope the naturalized alien is to be entitled to the rights granted in the Colony.

[*cf.* p. 230.]

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resting from the point of view of jurisprudence, and for this purpose it is only necessary to emphasize the alternative: unless this view is sound, the "privileges of naturalization" included more in the Colonies than they included in the United Kingdom.

NOTE on meaning of "privileges of naturalization", *contd.*

Tested by this view the Act of Jamaica would have undergone many vicissitudes. It confers unlimited rights. Passed in 1683, it was then within the powers of a Colonial Legislature: from 1700 to 1870, it would appear to have been beyond them, in so far as the political rights are concerned: but since 1870, it would have recovered its original vitality.

Residence of alien in naturalizing Colony essential: he is an alien beyond the Colony.

Residence of the alien in the Colony which naturalizes him is, therefore, the *sine quâ non* of his enjoyment of the privileges which the naturalization confers upon him.

The consequence of this evidently is, that the person naturalized in a Colony, becomes once more an alien when his residence in that Colony ceases.

Qualification of s. 7 as to person's former State unnecessary.

It is to be specially noticed in considering the meaning of s. 16, that the respect for the national law of the person's former State which it was the fundamental policy of the Act to show, and which found expression in the qualification as to the effect of an English certificate in that State in s. 7, and was again repeated in ss. 3, 6 and 8, is not mentioned in connection with the colonial certificate. And for this sufficient reason, that a grant of privileges when the person is not within the Colony was not contemplated; such a qualification would therefore have been superfluous.

[*cf.* p. 115.]

When the nature and effect of the English certificate was being analysed with special reference to the position of the naturalized subject's position abroad, certain questions were propounded which seemed to give rise to difficulties. Those difficulties do not arise in connection with the colonial certificate, and may be answered at once. The alien naturalized in any Colony has not, when he is beyond the Colony, the rights and obligations of a natural-born subject abroad: in civil matters he may not sue in the Colonial Courts as a subject may sue, more especially in the matter of giving security for costs: and if he is sued, he is not to be served with a writ as a subject may be served, but only with a notice of writ, under the colonial Rule of Court corresponding with Order XI: in criminal matters he is not liable to punishment, as a British subject is liable, for breaches of the extra-territorial laws of England, but is exempt, as an alien is exempt, from their operation: and when he is a country in which the King exercises foreign jurisdiction, he may not sue and be sued in the Consular Courts. Diplomatic protection when he is abroad will only be afforded him as a matter of courtesy, not as of right.

Consequences of the alienage beyond Colony.

His position in the United Kingdom and the Colonies is that of an alien: presumably, of course, a subject of his original State. What would happen if by chance the law of that State expatriated him—because, for example, he had taken the oath of allegiance to a foreign Sovereign—remains unsaid. But one thing

is certain, the colonial certificate which had caused such a disastrous effect on his original nationality, would not for that reason become more extensive in its operation, nor have any greater effect beyond the limits which the law has set to it.

When absent from the Colony he has only an alien's rights.

But this transition from subject to alien leads to difficulties with regard to rights acquired in the Colony when the naturalized person leaves it. These questions have been much simplified by the general assimilation of the alien's rights to property to those of a subject. But the ownership of British ships is dealt with by a special law which makes continued residence the essential condition of continued ownership. It may be that there is still some Colony where aliens may not hold land. What would happen in the case of a naturalized alien who has acquired lands in the Colony, and who leaves the Colony? Would he cease to be owner on proceedings being taken by the Crown?

Principle of territorial effect of colonial legislation inapplicable to naturalization.

So much as to the primary principle of residence. We must now consider whether the secondary principle is in any way modified by s. 16. The effect of colonial legislation is territorial: it cannot confer rights nor impose duties beyond the limits of the Colony. It has already been pointed out that it is for this reason that Colonial legislation cannot, within the limits of its ordinary powers, confer the status of British subject on an alien, because that status is of such a nature that it would claim universal recognition*.

But assuming that the idea involved in colonial naturalization is merely the grant to the alien of the rights of a British subjects in a given Colony, it is even then impossible to confine the enjoyment of some of these rights absolutely to the Colony.

Case of colonial naturalized alien plaintiff in English Court.

Suppose for example, a person naturalized and residing in Ceylon brings an action in the Courts in England. Being non-resident, he may be called upon to give security for costs: but under which rule? That applicable to subjects, or that applicable to foreigners? He is within the Colony, and is entitled therein to the rights of a British subject: yet he is exercising a right beyond the Colony. Or again, suppose the same person to have infringed a provision of some extra-territorial law, not made spe-

* A colonial statute can of course affect the status of persons in the Colony: and judgments of status of Colonial Courts fall within the general principle of recognition which has already been referred to. Although as a general rule legislation dealing with status is also entitled to recognition, it may itself be subject to some controlling principle. [cf. p. 131.]

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cially applicable to the dominions: could he be prosecuted in England as a British subject, or would he be exempt from the operation of the law as being an alien to, and in the United Kingdom?

This seems to be a small matter, but it contains the germ of the principle governing the question: and we may pass from it at once to the kindred and important provision of the Merchant Shipping Act, with regard to the ownership of British ships by persons naturalized in the Colonies. So long as they are resident in the naturalizing Colony they may be owners: and this not necessarily of a colonial registered ship. In the condition of residence this provision corresponds with the fundamental principle of colonial naturalization. But this is not a right to be enjoyed in the Colony, unless the place of enjoyment of a right is the *locus* of the person and not the *locus* of the right. Take the following case: A ship trading between Liverpool and New York is owed by an alien naturalized and resident in Hong Kong; a suit is brought in the Court of Admiralty in England in respect of a collision in the Atlantic. The recognition of the right to own, resulting in the recovery of or liability to damages, can hardly be said to be the enjoyment of a privilege in Hong Kong.

Provisions of Merchant Shipping Act as to ownership of British ships by colonial naturalized aliens.

[*cf.* p. 107.]

Either the Merchant Shipping and the Naturalization Acts are in harmony on this point, or they differ. If they differ, there would be one Act laying down with precision that naturalization in the Colonies is to confer no rights beyond the Colony, and another Act expressly granting such a right.

It is however submitted that there is no divergence between the to Acts. Colonial naturalization establishes the right of the alien to the enjoyment of the privileges of naturalization: that is, to the rights of a British subject, so long as he is resident in the Colony. There is nothing in this which requires the right itself to be in the Colony: on the contrary it must embrace those rights of a British subject which are capable of enjoyment beyond the limits of the country in which he is resident. If we assume, for example, that copyright throughout the dominions may be acquired by publication in any Colony by a non-resident British subject, but not by a non-resident foreigner,* the alien naturalized in a Colony would surely be entitled to the protection al-

Merchant Shipping Act and Naturalization Act based on same principle.

[L. R. 3 H. L. 100.]

* The case of *Routledge* v. *Low* is examined in the last chapter of this book.

though he published his book in some other Colony. It may be said that this same principle might be have been stretched, before 1870, to the ownership of land in the United Kingdom. The answer is probably in the affirmative.

But it is clear that no colonial ordinance could authorise any one in the Colony to own British ships not registered in the Colony. The secondary principle of colonial legislation is thus set aside with regard to colonial naturalization. The result of this enquiry is, therefore, that colonial naturalization does contains something inherent to it which of necessity takes it beyond the legitimate region of colonial legislation.

Reason why Parliamentary sanction to colonial naturalization essential.

This, it is submitted, is the doubt which was dealt with in 1847, and is the reason why Parliamentary authority is necessary now to sanction naturalization in the Colonies.

This condition fulfilled, the legislation "*shall within such limits have the authority of law* :—It is by no means clear what this provision was intended to convey. All colonial legislation has "the authority of law" within the limits of the Colony, and not beyond : and it cannot have been intended to put naturalization laws on a different footing. The words therefore seem to be redundant : and not only redundant, but confusing. If a question arose in an English or a foreign Court as to what rights a person naturalized in a certain Colony had in that Colony, the colonial law would of course be applied. It would then have the authority of law not only in the Colony itself, but in the country were the question arose.

Colonial legislation to have the authority of law in the Colony :

The difficulty much resembles that which arises in connection with the use of the words "shall in the United Kingdom" is s. 7 : the fact seems to have been overlooked that the existence of the rights in a Colony of a person born, residing, or naturalized in it, may be called in question, or enforced beyond the Colony.

[*cf.* p. 115.]

"*Shall be subject to be confirmed or disallowed*" :—This provision is repeated from s. 2 of the Act of 1847, and seems also to have been inserted by way of greater caution. It does not profess to treat naturalization laws differently from other colonial legislation, which is always subject to confirmation or disallowance. It however prevents any doubt arising whether the special enabling power granted by the section, removed the laws passed under it from the operation of this general law ; and is to be found in similar enabling statutes.

and subject to confirmation and disallowance.

It will be observed that no conditions are laid down as to previous time of residence in the Colony, nor as to the necessity of future residence therein. These, as well as other details, are left to be dealt with by the Colonial Legislatures.

Form of colonial grant does not necessarily create alien a British subject.

At this point there is evidently something wanting in the statement of the case. The statute refers to the grant of the privileges of naturalization : the colonial laws refer to the grant of the rights of a British subject in the Colony. Both provisions are evidently incomplete, for there is no express statement that colonial naturalization carries with it British nationality : not even British nationality limited to the naturalizing Colony.

[*cf.* p. 110.]

It is necessary to revert to the analysis of the paragraph of s. 7 which defines the effect of the certificate of naturalization under the English Act. It will be remembered that the conclusion arrived at was that there was nothing in the actual words used, nothing in the mere grant of the rights of a natural-born British subject, from which it could be *conclusively* inferred that the intention of the Act was to make the alien a British subject. That this intention was made manifest by the use of term " British subject " in the qualification to the paragraph, and elsewhere in the Act, is true : but the main point is that the words used to define the effect of the certificate omit all reference to the fact that the status of British subject results from it.

But the fact that the full meaning of the English certificate can only be derived *aliunde*, and not in the actual definition, does not alter the fact that the result of English naturalization is to make the alien a British subject, and that therefore one of the privileges of naturalization is that the alien becomes a British subject : and that therefore again, this is one of the privileges which the Colonial Legislatures may grant—limited it is true to the Colony which grants it: just as the privilege granted under the English Act itself is said to be limited to the United Kingdom. It therefore must be accepted that a Colonial Legislature has the right to confer British nationality limited to the Colony*. There is a somewhat occult reference to the question in another section

Colonies may make aliens subjects limited to the granting Colony.

* Another example of the grant of the status of British subject with limitations is to be found in the Liberated Africans Act, 1853, which provides that all liberated Africans who are domiciled or resident in Sierra Leone are to be deemed, from the date of their arrival in the Colony, natural-born British subjects, with capacity " of taking, holding, devising, and transmitting an estate, real or personal " within the Colony, subject to the right of the Legislature of Sierra Leone to make other provisions with regard to the holding of lands.

16 & 17 Vict. c. 86.

of the Act from which this intention may also be inferred. The words of s. 3, which relate to subjects of a foreign State "who have been naturalized as British subjects", refer to colonial as well as to British naturalizations. This point will be more fully explained in the next chapter, where the operation of s. 3 in the Colonies is considered.

Examination of manner in which power has been exercised.

But then the question immediately arises: Have the Colonial Legislatures acted to the full extent of their powers, seeing that they may grant all, or any, of the privileges of naturalization? Is it correct to say broadly that the effect of colonial naturalization is to make the alien a subject within the naturalizing Colony? It is by no means clear that there is any general rule applicable to all the Colonies, for each legislates in its own peculiar fashion: and there are, as we have seen, degrees in the rights which are in fact conferred on aliens. Between the rights which an alien enjoys normally in any country and those of the subject which he enjoys when he has been naturalized, there is that possible intermediate stage of the grant of extraordinary privileges without naturalization, of which the man of colour serving in the army is the most complete example. It is clear that, as there is complete liberty of legislation, the result of the colonial grant can only be tested by the words used in any given Colony; "naturalization" may be used for convenience to describe the different results in a general manner, but it by no means follows that it is apt for the purpose.

[*cf.* pp. 108, 110.]

Colonies which only reproduce first part of s. 7.

The colonial laws must be examined a little more closely. The law of the Cape of Good Hope already set out is typical of those of many other Colonies.

It is a reproduction of the first part of s. 7 of the English Act, and is in effect the English definition without its qualification. But this definition does not of itself import British nationality: the intention to confer nationality was, in the English Act, found in other sections; and so as to colonial laws drafted in this way, the intention to go to the full extent of their powers and grant limited nationality must be found, if at all, in other parts of the law. If no such intention is to be discovered, then the only inference is that it was not intended to grant this limited nationality, but to allow the alien to remain alien, conferring on him the rights and privileges of a British subject in the Colony: to treat him in fact as the Army Act treats the man of colour.

[*cf.* p. 231.]

[*cf.* p. 110.]

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In the Queensland Act we have an example of this intention discoverable *aliunde*. The effect of the certificate is defined in the same terms as in the Cape law, except that certain political privileges are withheld : but in s. 5, aliens, natives of European or North American States, who are naturalized under the Act, are expressly termed " naturalized British subjects ".

Colonies which reproduce the whole of s. 7.

But there is another group of Colonies which have reproduced the English definition together with its qualification. Thus s. 15 of the Canadian Act is as follows :—

Law of Canada, 1886.

> An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject within Canada,—with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The addition of the qualification of s. 7 meaningless in a Colony.

The value of the addition of this qualification may be tested by resorting to the form of argument already used with regard to the meaning of the English Act.

> He shall not, when within the limits of his former State, be deemed to be a British subject, unless he has ceased to be a subject of that State.

[*cf.* p. 124.] The risk of falling into the circular argument in connection with the question of the " absolute " or " qualified " nature of the certificate will be avoided, if we assume that the law of the former State punished the mere taking the oath of allegiance to a foreign Sovereign, by loss of nationality.

[*cf.* p. 156.]

Now, assuming that these words have any meaning, the corollary of the above provision must be that,

> He shall, when within the limits of his former State, be deemed to be a British subject, if he has ceased to be a subject of that State.

But the fundamental proposition is that by colonial naturalization he never could be considered a British subject in that State. The suggestion that the qualification has no meaning is therefore justified. Further, if the grant of the rights in the first part of the section do not of themselves create a British subject, it is hardly to be contended that the addition of meaningless words can effect that object.

[*cf.* p. 236.]

Nor can the addition of the taking the oath of allegiance make any difference: for it is only adding to what does not of itself constitute nationality, something else which also does not constitute nationality.

The result of this examination is that while the legislative powers granted to the Colonies does include the right to make aliens British subjects within the naturalizing Colony, it by no means follows that they have done so. The effect of the clauses which are drafted on the lines of those we have examined, where the Acts contain no other reference to the persons naturalized becoming British subjects, being no more than the grant, more or less complete, to an alien of the rights of British subjects, to be enjoyed so long as residence within the Colony continues.

The proposition may sound alarming that "naturalization" should leave an alien of the same nationality as he had before: but after all is said, it is not much more alarming than the proposition that a British subject ceases to be a British subject when he goes a few miles to sea. If what I suggest, with the greatest possible hesitation, is sound, the subject is cleared of one of its principal anomalies; though perhaps some other word than "naturalization" would have to be invented more in accord with the actual facts.

Examination of suggestion that person naturalized in a Colony remains an alien.

The consequences of the proposition may be briefly examined. Although an alien, he would have none of the disabilities of an alien, because he is, whilst resident in the Colony, invested with all the rights of the natural-born British subject. It must be noted that the immediate grant of full political rights is not, even now, the usual rule, nor is it essential to the question. This is often regulated specially by the Constitution or the Electoral Law of the Colony, a period of residence being usually required.

The ownership of lands raises no difficulty, for aliens already have the rights of natural-born British subjects in respect of it. If there were any doubt as to whether the same law was in force in any Colony, the certificate of naturalization would do what the Act of 1870 did, and in precisely the same words, and so settle the doubt: for the alien holds and disposes of land "in the same manner in all respects as a natural-born British subject".

Nor does the ownership of British ships raise any difficulty. Indeed s. 1 of the Merchant Shipping Act seems specially to fit in with the idea; for aliens are not mentioned, the special right

[*cf.* pp. 107, 238.]

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of holding British ships being, as we have seen, given to persons naturalized in the Colonies.

The main difficulty connected with the subject of colonial naturalization arises in connection with the change of nationality when the person leaves the Colony: instead of saying that he is a British subject who has then become an alien, it would seem more reasonable to express the effect of what has happened by saying merely, that he is an alien who, on leaving the Colony, no longer enjoys the rights which were granted to him while he was in the Colony.

On board a British ship on the high seas the fact that he was called an alien in the Colony he has left instead of a British subject will make no difference: he is, irrespective of his nationality, subject to the law of the flag. If he is on a foreign ship, s. 686 of the Merchant Shipping Act will not apply to him, nor would it by whatever name he is called on shore. The Fugitive Offenders Act raises no difficulty, for colonial extradition is independent of nationality, and is concerned only with the fact that an offence has been committed in a certain Colony. A question involving nationality might possibly arise in connection with extradition to a foreign country: but if so, it would be caused by the fact of colonial naturalization being limited in its effect; it certainly would be simplified rather than aggravated, by calling the person an alien from the first.

Summary of facts connected with Imperial and Colonial naturalization.

The actual facts connected with Imperial and Colonial naturalization combined are these. In virtue of the narrow construction of s. 7, the naturalized British subject is entitled to the rights of a British subject in the United Kingdom only, is a British subject only in the United Kingdom, but an alien abroad and in the Colonies; so, the alien naturalized in any Colony is entitled to the rights of a British subject only while he is in that Colony, *may be* a British subject in that Colony, but is an alien in the United Kingdom, in all other Colonies and abroad. It is a curious result, productive of infinite inconvenience and much expense. The Chinaman naturalized in Hong Kong is an alien when he comes to Mauritius: he may become a British subject again by naturalization in Mauritius, but he is again an alien in Seychelles: and even if the same process be repeated in the United Kingdom he can never be a British subject in any other part of the Empire,

[*cf.* note on p. 219.]

unless he once more becomes naturalized there; but he can never be a British subject in Réunion. Such variations in nationality are puzzling to the student of our laws: they are bewildering to the unfortunate foreigner who must avail himself of them.* Chapter XV

CANCELLATION OF COLONIAL CERTIFICATES.

There is in many colonial ordinances a power to revoke the certificate which does not exist in the Act of 1870. The power is usually exerciseable simply for a false statement made in connection with the application, as in the Cape of Good Hope law: occasionally also, as in the Mauritius law, for certain offences against the State or the public peace†. The fact that it does not exist in the parent Act is no reason why it should not form part of the colonial system; the cancelling of a certificate falls within the meaning of the grant of the power to give it. Nor is there any inherent difficulty in the cancellation of a colonial certificate. It is strictly limited in effect to the Colony which grants it: and even if it goes so far as to change the nationality of the alien during residence, it does not profess to do more than to admit him as member into the society of the Colony, and to give him temporarily the privilege of that membership. There can therefore be no reason why those privileges should not be withdrawn if they have been obtained by fraud, or if, by his subsequent conduct, he shows that he is unworthy to continue to be a member of that society.

Cancellation by Executive for fraud and other matters. [*cf.* p. 194.]

Power to cancel consistent with nature of colonial grant.

The power of cancellation for fraud with which the Executive is invested does not necessarily give the Courts the right to treat the certificate as null and void on that ground, any more than it would on the ground of an offence against the State. The existence of such a power would, however, be an additional argument in favour of the exercise by the Courts of their own inherent power of annulling the consequences of fraud.

Cancellation by the Court for fraud.

[*see* the reference to the *Duchess of Kingston's case*, p. 103.]

RE-ADMISSION TO BRITISH NATIONALITY BY COLONIAL GOVERNORS.

By the third paragraph of s. 8, the Secretary of State's power

* The subject of Colonial Naturalization has been considered in an interesting paper in M. Clunet's "Journal du Droit International Privé" for 1883 [Vol. 10 p. 449], by Mr. Willian Newton, K. C., of the Mauritius Bar.

† The Mauritius ordinance adds as a further ground for revocation, subsequent naturalization in any country which does not form part of the British Empire. The provision seems however to be based on a misconception of the nature of a colonial certificate.

of granting certificates of re-admission to British nationality may be exercised by the Governors of Colonies.

Re-admission of statutory aliens to British nationality by Colonial Governors.

33 & 34 Vict. c. 14, s. 8 : [3rd. para.]

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the Governor of such possession : and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

The powers of the Colonial Legislatures as defined by s. 16, are limited to the grant of the privileges of naturalization, and do not include the right to re-admit to British nationality ; for, as we have abundantly seen, whether it be looked at from an imperial or from a colonial point of view, the effect of the certificate of re-admission to British nationality is widely different from that of the certificate of naturalization. The power with which Governors are invested by this section could not, therefore, have been conferred on them by the Colonial Legislature.

[*see* Chapter XI.]

The jurisdiction of the Secretary of State exerciseable by Governor.

"The jurisdiction of the Secretary of State in the United Kingdom" is the right to grant a certificate of re-admission to British nationality to a natural-born British subject who has become naturalized in a foreign State. The condition under which the jurisdiction is exercised is that the applicant has resided for five out of eight years in the United Kingdom, and intends to reside in the United Kingdom. The section rests on a basis of residence in the United Kingdom. It provides, however, for the case of the "statutory alien", or "person who has become an alien in pursuance of the Act", who may be resident in a Colony. Expatriation depends on the Imperial Act, and even though the person may be a colonial subject, his re-patriation is a question altogether removed from the influence or operation of colonial legislation.

Conditions of resumption of British nationality may be fulfilled in a Colony.

Resumption of British nationality being of imperial concern, the Act has provided means for the necessary formality being gone through in whatever part of the dominions the statutory alien may be ; and further, the residence which is the essential condition to the grant of the certificate of re-admission, may be in the Colony.

The usual condition applies to the colonial residence, that is, it must be for five out of eight years prior to making the application. So far as the intention of future residence is concerned,

it would seem that this also may be in the Colony. The section provides that residence in the possession is to be equivalent to residence in the United Kingdom : and this is sufficiently broad to cover the future as well as the past. The forms of the certificate of re-admission in the regulations do in fact recite the intention to reside in the United Kingdom or in the Colony. [see Appendix to this Part.]

It would also seem to follow that as the jurisdiction of the Secretary of State is to be exercised by the Governor, that he has the same absolute discretion as to the giving or withholding the certificate : and also, subject to the question of regulations to be considered presently, to decide on the evidence whether the case for re-admission is made out : possibly also he has the power of determing the period, either generally or specially, during which the five years residence may have occurred.

Powers of the Governor as to the grant.

But it must be noted that colonial residence for the purposes of re-admission must be spent in one Colony : at present it is not sufficient to have spent the qualifying years in the Colonies generally.

Residence must be in one Colony.

PROVISIONS OF THE ACT BASED ON NATIONALITY.

It has been said above that re-admission to British nationality is treated as of imperial concern. It will be found that in all cases where the Act deals with nationality as distinct from naturalization, the question is treated from the broad point of view of the Empire. Thus, under s. 10 [4], where the father or widowed mother has obtained a certificate of re-admission to British nationality, the children resume the position of British subjects, if during infancy, they have "become resident in the British dominions with such father or mother". This naturally applies to re-admission granted in the Colonies : and as residence in the Colony where the certificate is granted is sufficient, the residence of the child must also have been in that Colony.

Act treats all questions involving nationality as imperial.

So, as to the declarations of British nationality which, under s. 6 [1], might have been made by British subjects then naturalized in a foreign State, within two years after the passing of Act, in virtue of which they remained British subjects. It was expressly contemplated that they might be made anywhere in the dominions, which pre-supposes residence there.

And so with regard to alienage—by naturalized aliens in virtue of a convention, under s. 3 : and by British-born subjects

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with double nationality, under s. 4—the declarations of alienage may also be made anywhere in the dominions, which again presupposes residence.

Nationality and alienage governed by imperial law.

The principle on which all these provisions rest is the one which has been fully examined in the preceding chapter: that not nationality alone, but also alienage, is governed by imperial law, and extends throughout the dominions. It will be necessary to revert once more to this principle in the analysis of the Canadian Naturalization Act in the next chapter.

OTHER PROVISIONS OF THE ACT AFFECTING THE COLONIES.

The sections of the Act which contain definitions and provide for the making of regulations, also apply to the Colonies.

33 & 34 Vict. c. 14, s. 17.

Colonial definitions.

Definition of terms. In this Act, if not inconsistent with the context or subject matter thereof :—

* * * *

"British possession" shall mean any Colony, plantation, island, or settlement within His Majesty's dominions, and not within the United Kingdom, and all territories and places under one Legislature are deemed to be one British possession for the purposes of this Act :

"The Governor of any British possession" shall include any person exercising the chief authority in such possession :

* * * *

By s. 11, regulations may be made by the Secretary of State providing for the form and registration of certain documents required by the Act, for their transmission to the United Kingdom, and in respect of fees.

Power of Secretary of State to make regulations.

38 & 34 Vict. c. 14, s. 11 : [last para.]

Any regulation made by the Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not, so far as the imposition of fees, be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction‡ may for the time being be in force.

‡[*see*: probably "regulation".]

Regulations made under s. 11 which might apply to the Colonies.

The regulations which might apply to the Colonies are—those which deal with the form and registration of certificates of readmission to British nationality [s. 11 (3)], granted by Colonial Governors : of declarations of alienage [s. 11 (4)], which may be made in the case of naturalized aliens reverting to their original nationality under a convention, and of British-born subjects with double nationality : and formerly, of declarations of

British nationality [s. 11(1)], under the proviso of s. 6, by British subjects naturalized before the Act.

The regulations with regard to oaths of allegiance made by the Secretary of State under the Naturalization Oaths Act, 1870, might also apply to the Colonies in the case of certificates of re-admission; and formerly, in the case of declarations of British nationality under the proviso of s. 6; the oath being requisite in these cases.

33 & 34 Vict. c. 102. [set out on p. 107.]

The regulations under both Acts may further deal with the transmission to the United Kingdom for registration and safe keeping, or for being produced as evidence, any declarations or oaths made in the Colonies, or any copies of such declarations or oaths.

The meaning of the proviso, saving colonial legislation which is contrary to or inconsistent with such regulations, is not clear: for, quite apart from the fact that all the above matters fall within the scope of the Imperial Act, and therefore presumably can no longer be competently dealt with by Colonial legislation, none of them appear to be matters, in respect of which the Colonies could legislate under their ordinary powers. For where they do not specifically refer to the United Kingdom, they deal with nationality and alienage, matters in respect of which, as has already been pointed out, Colonies cannot legislate.

Saving of colonial legislation.

By s. 12, regulations are made with respect to evidence under the Act: and here again certain of the rules may apply the Colonies; the cases correspond with those given above with regard to the Secretary of State's regulations under s. 11.

Regulations under s. 12 applicable to the Colonies.

The only regulations applicable to the Colonies which have in fact been made are in respect of certificates of re-admission to British nationality. Forms have been issued by the Home Office in respect of the grant by the Secretary of State, with a provision for taking the oath of allegiance in the Colonies: by the Colonial Office, in respect of the grant by Colonial Governors: and by the India Office, in respect of the grant by the Governor General in Council.

[see Appendix to this Part.]

SPECIAL LEGISLATION AFFECTING PERSONS NATURALIZED IN THE COLONIES.

The first section of the Merchant Shipping Act, 1874, which deals with so much particularity with the ownership of British

ships, grants to persons naturalized in the Colonies the same right of ownership as it grants to persons naturalized in the United Kingdom. So much of the section as relates to this class of owners is set out on p. 103. Stated briefly, the law is that persons naturalized may, after taking the oath of allegiance, become owners, provided that during their ownership they reside in the dominions, or are partners in a firm carrying on business in the dominions.

Provisions of 57 & 58 Vict. c. 60, s. 1, as to ownership of British ships by persons naturalized in the Colonies.

[*cf.* p. 238.]

The relation of this enactment to the provisions of the Act of 1870 with regard to colonial naturalization has already been considered.

A special question arises in connection with the subject, as to what is to happen when the colonial naturalized owner leaves the Colony: he then becomes an alien and cannot remain owner. Presumably action might be taken under ss. 28 and 29, which enable the Court to make an order for sale on transmission of the ownership to an unqualified person. He is an unqualified person even during a temporary absence; though on his return, on the probable hypothesis that his certificate of naturalization is still effective, he would again become qualified.

Query, as to what is to happen when such owner leaves the Colony.

24 & 25 Vict. c. 121; authorising conventions modifying law of domicil on death abroad.

The Domicile Act, 1861, provided for conventions being made with foreign countries with regard to the domicil of British subjects dying abroad, and to the administration of their estates by British Consuls: with reciprocal provisions for the benefit of subjects of the other contracting State dying within the dominions. Domicil was to be held not to have been acquired without residence for one year immediately preceding the person's death. Undoubtedly the contemplated relief from the stringency of the law of domicil would have been great; but no conventions have been entered into under the Act. The question is therefore not of much practical importance: but s. 3 provided that the Act was not to apply to aliens naturalized in any part of the dominions: that is to say, whether in the United Kingdom or the Colonies.

24 & 25 Vict. c. 121, s. 3.

Act not to apply to foreigners naturalized.

This Act shall not apply to any foreigners who may have obtained letters of naturalization in any part of Her Majesty's dominions.

The Act itself will be more fully discussed in the second part of this book; so far as this section is concerned its meaning

is far from clear. On the face of it naturalized subjects seem to be debarred from the privileges which the Act confers on British subjects, and it would become a question, whenever the Act acquires vitality, whether the sweeping provisions of s. 7 of the Act 1870, as to the effect of naturalization, have not repealed this section, in so far as it relates to naturalization in the United Kingdom. Another interpretation was probably intended: that the provisions of the Act which affect foreigners should not apply to foreigners who have been naturalized in the dominions: that is to say, the domicil of a foreigner who has been naturalized, and who has thus become a British subject, will be determined by the same rules as the domicil of a British subject. But this would be giving a larger effect to colonial certificates than the law warrants, except in so far as the convention might find its application to the circumstances of some person's death in any given Colony.

Act not to apply to aliens domiciled in dominions.

COLONIAL DENIZATION.

At the close of the chapter which dealt with denizens, the special application to the Colonies of the Sovereign's right of denization was touched upon: it now remains to consider the question more fully. It would seem clear that the King could limit the enjoyment of his grant to any specified Colony. The position of the denizen would then be much the same as that of an alien naturalized in the Colony, for he would be an alien beyond. But there seems to be no reason why denization need be, as naturalization must be, limited to one Colony. It would not seem unreasonable to suppose that denization might, for example, have been granted to take effect in the whole group of the Australian Colonies. In such a case the denizen would have been in a better position than the alien naturalized in any one of those Colonies. It is also conceivable that denization might be granted so as to be operative within the jurisdiction of the flag, so that the person might thereby be a British subject, and not an alien, on board a British ship at sea.

[*see* Chapter VI.]

Probable scope of letters of denization with regard to the Colonies.

So much by way of supplement to what has already been said. We must now consider denization as it is granted, not by the King, but by the Governor of a Colony. I have referred already to the fact that there is still one Colonial Act empowering the Governor to grant letters of denization—the Naturalization and

Grant of letters by Governor of a Colony: as by law of New South Wales.

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Denization Act of New South Wales of 1898, Part IV of which deals with denization. It is a reproduction of the old Act, No. 6 of 9 Geo. IV, passed when the Colony was in process of settlement, to induce foreign officers to come with their properties to the Colony, by enabling them to become partakers of the advantages and privileges which natural-born subjects enjoy.

[*see* Appendix to this Part, for both Acts.]

The preamble recites the provision of the Aliens Act of 1844 with regard to colonial legislation for naturalization, but it does not recite any right conferred on the Colonies to legislate in respect of denization. The question being one of prerogative, it is clear that they have no such right ; nor has it been conferred. The existence of this special example of a colonial law on the subject may probably be explained in the following way. The condition required for the grant is that the foreigner should arrive in the Colony with a recommendation from the Secretary of State that he should be granted letters of denization. This would seem to show that there is no delegation of the Sovereign's right, but only a transference of the exercise of the executive part of the prerogative : in other words, that the Governor issues the instrument on behalf of the Sovereign, the " recommendation of the Secretary of State" making it practically equivalent to the grant by the Sovereign. This appears to be the meaning of the words " the Governor in exercise of the prerogative right of the Crown as now exercised by him ".

Constitutional question involved.

Provisions of N. S. W. Act, No. 6 of 9 Geo. IV ;

In the former Naturalization Act of the Colony, the constitutional point was dealt with in s. 13 somewhat differently.

> Nothing in this Act contained shall affect the prerogative right of the Crown as exercised by the Governor of granting letters of denization to be in force in this Colony.

and of the Act of 1898.

The effect of the grant is defined in s. 13 of the Act of 1898 to be, that the grantee

> shall be qualified to hold lands in New South Wales, and shall be entitled to all such rights and privileges as are conferred by ancient usage or by any Imperial Act in force on 3rd. July, 1828, upon any denizen in England.

The date given is that of the coming into operation of the old Act. There would appear to be a slip in the drafting, as " in the Colony" should follow " shall be entitled ". These words exist in the old Act.

By s. 14 the letters are to be recorded in the Supreme Court, and

> a certificate of such record shall be deem in every Court in New South

Wales to be a sufficient proof that the person to whom such letters of denization were granted as aforesaid is a denizen subject of a Great Britain to all intents and purposes whatsoever.

The oaths to be taken and subscribed, and the declaration to be subscribed, are of allegiance, supremacy, and abjuration, as provided by the repealed Imperial Act, 1 Geo. I, stat. 2, c. 13.

NOTE.

The following are the Circular Despatches issued by the Colonial Office which are referred to in this Chapter.

(A).—*Despatch notifying arrangements for issuing passports to persons naturalised in the Colonies.*

Downing Street, 19th. September, 1902.

You are probably aware that hitherto the authority of His Majesty's Representatives and Consular Officers abroad to issue passports to persons naturalized in British Colonies, but not possessing Colonial passports, has been limited to furnishing such persons with provisional passports, limited in duration, in order to enable them to return to their Colony or to the United Kingdom.

It has been found, however, that this arrangement causes trouble and inconvenience to persons travelling abroad who have been naturalized in British Colonies, and the Secretary of State for Foreign Affairs has therefore authorised His Majesty's Representatives and Consular Officers to issue to such persons, on proof of naturalization, a passport similar in form to that enclosed in my Circular despatch of the 31st. of August, 1898.

Form of Passport,
enclosed in Circular Despatch 31st. August, 1898.

This is to certify *(here insert full name)* formerly a *(here insert the nationality of origin or country in which the person has been previously naturalized* subject) who is perceeding to for the purpose of , and whose description is entered below is within the limits of *(here insert the name of the Colony or Possession)* a British Colonial subject by naturalization.*

This certificate is granted with the qualification that the said *(here insert the full name)* is only entitled beyond the limits of *(here insert the name of the Colony or Possession)* as a matter of courtesy, to the general good offices and assistance of Her Majesty's Representative abroad.

Given at Government House, day of 18 .

(Governor.)

Signature of Bearer.
Residence of Bearer.
Profession of Bearer.
Age of Bearer.

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* In the case of a statutory alien who has been re-admitted to British Nationality substitute " re-admission to British Nationality " for " naturalization ".

Chapter XV

(NOTE giving Colonial Office Circular Despatches, *continued*.)

(B).—*Despatch notifying that passports issued to persons naturalized in the Colonies are to indicate that colonial naturalization is limited to the Colony granting the certificate.*

Downing Street, 24th. October, 1902.

In continuation of my Circular Despatch of the 19th. ultimo relative to the issue by Consular Officers abroad of passports to persons naturalized in British Colonies but not possessing Colonial passports, I have the honour to transmit to you, for your information, a copy of the Circular which the Secretary of State for Foreign Affairs has issued to His Majesty s Representatives and Consular Officers on the subject.

Enclosure to Circular 24th. October, 1902.

Foreign Office, September 12th. 1902.

With reference to the Circular (Treaty) Despatch from this Office of the 19th. September, 1898, relative to the form of passport to be issued by Governors of British Colonies to persons naturalized in those Colonies, I have to inform you that you are authorized, when necessary, to issue to such persons passports containing a distinct statement that the holder is, within the limits of the Colony, within which he was naturalized, a British Colonial subject by naturalization, and is only entitled beyond the limits of that Colony as a matter of courtesy, to the general good offices and assistance of His Majesty's Representatives abroad. Care should especially be exercised to avoid any appearance of claiming to protect such persons as against the laws of their country of origin.

A statement in the form annexed should accordingly be inscribed at the foot of each passport issued to such persons.

Annex.

" This Passport is granted with the qualification that the holder is, within the limits of the Colony in which he was naturalized, a British Colonial subject by naturalization, and is only entitled beyond the limits of that Colony, as a matter of courtesy, to the general good offices and assistance of His Majesty's Representatives abroad ".

Chapter XVI.

Of the Canadian Naturalization Act, as illustrating the application of the Act of the United Kingdom to the Colonies.

In the two preceding chapters we have dealt with the law of nationality in its application to the Colonies, and of naturalization in the Colonies in virtue of the express provision of s. 16 of the Naturalization Act of 1870. But this does not exhaust the subject in its colonial aspect. There are, as we have just seen, references to the dominions in other sections of the Act—such as in s. 3, the power to make declarations of alienage before Judges in the Colonies: and in s. 10 4, the condition of residence in the dominions for the child to share in his parents re-admission to British nationality. The study of the Act so far, apart from these matters, has been confined to the United Kingdom: for, like the question of nationality itself, it could not be considered on the broader ground of the dominions, until certain questions fundamental to the Colonies had been specially examined.

Scope of colonial question.

We have now to consider this further question, whether some of the other sections of the Act do not, from their nature, apply throughout the dominions. Again, although we have seen what is the general principle with regard to the grant of naturalization in the Colonies, and have examined the colonial legislation in this respect, we have not as yet considered the question of colonial legislation as a whole. It was almost inevitable that general legislation passed in the Colonies after the Act of 1870 became law, should be modelled on that Act. In some indeed the legislation has adopted that wider range of subjects which in the English Act—was justified by the scope of its title "*To amend the law relating to the legal condition of aliens and British subjects*".

Enquiry whether other sections do not apply to the Colonies.

Whether such extended legislation in a Colony is warranted is a question of much importance. The power of the Colonial Legislatures under the Act are precise: to impart "to any person the privileges or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession"; and where a Colonial Legislature has gone beyond the limits imposed

Limit of powers of legislation in the Colonies.

Chapter XVI

two questions arise: first, whether the other matters fall within the power to legislate for the "peace, order and good government" of the Colony: and, secondly, assuming that they do, whether the question is not already covered by the Act of 1870 in its application to the dominions, so as to render the colonial legislation unnecessary, and superfluous.

Canadian Act based on Act of 1870 to be examined.

One of these general Acts was passed by the Dominion of Canada, and it was in almost all its details a counterpart of the Imperial Act, modified by the limitation of its various provisions to Canada. I now propose to take the different articles of this law as the text for discussing many interesting points which arise out of the questions just indicated. The discussions will be complementary to what has already been said on the sections of the Act, of 1870, which, for the reason just given, necessarily incomplete in some details. The Canadian Act may be looked upon as the extreme limit to which colonial legislation has gone, and it therefore covers the whole ground.

It is well known that the state of confusion into which nationality had fallen as between Great Britain and the United States was one of the most potent causes which led to the Act of 1870 being passed: a convention with the United States being signed immediately afterwards. The subject of Canadian naturalization must therefore have a peculiar interest of its own, apart from the general questions indicated above: and for this reason I have thought it better to consider it in a separate chapter.*

Aliens may hold and transmit property of any kind. [Canadian Act, s. 3.]

Capacity of aliens as to property in Canada.

This section is a reproduction of the English provision [s. 2, U.K.]. Although not so expressed, it is of course territorial in its operation, and so far as land is concerned, is limited to real property in Canada. The question lies outside the scope of the permissive clause, s. 16 [U.K.], but falls within the general powers of a Colonial Legislature.

* Canada legislates by "Acts" and not "Ordinances", and the clauses are "sections" and not "articles". In order therefore to avoid confusion in the frequent references to the Canadian Act and the Imperial Act, I have added after each reference to the sections, [U. K.] or [C.], as the case requires, to indicate from which Act the section is taken. The Act is printed in full in the Appendix to this part of the book: the headings to the different paragraphs of this chapter, in which the Act is analysed, are either the marginal notes, or a condensed summary of the sections.

There is a special reference to property in Canada ; this is is probably due to the fact that the section also relates to personality ; an unnecessary provision, as we have already seen. There is the same omission in the reproduction of the proviso of s. 2 [U.K.], that the section does not entitle an alien to any right other than those expressly conferred on him by the section The qualification as to owning British ships is introduced into this section as a last proviso. [s. 14, U.K.]

Ex-patriation by naturalized aliens in virtue of convention with their former State [Canadian Act, s. 4.]

Ex-patriation of naturalized aliens under a convention.

This section reproduces s. 3 of the English Act, by which the special procedure of ex-patriation by means of a declaration of alienage was provided, where a convention has been entered into with the person's former State ; it applies to cases where the person in question " has been naturalized as a British subject within Canada ".

First possible interpretation : ex-patriation in Canada if person naturalized in Canada as well as in United Kingdom.

It is capable of two interpretations. First : as a consequence of the limited operation which is put by the narrow construction of s. 7 [U.K.] on English naturalization, the persons to whom the convention relates would have become by their naturalization British subjects in the United Kingdom only. The declaration of alienage, therefore, would only affect their status in the United Kingdom, and they would thenceforth cease to be what their naturalization had made them, British subjects in the United Kingdom. But they might have also been naturalized in Canada. They would therefore also have to be released from the consequences of their naturalization in Canada : a declaration of alienage would therefore also be necessary in Canada in order to enable them to cease to be British subjects in Canada.

This interpretation is in some respects the logical consequence of the underlying manifold principle of British naturalization : that it is in each part of the Empire limited to that part, and that there may be as many naturalizations as there are parts.

But s. 3 [U.K.] provides that person becomes an alien.

But there are certain considerations which point to its being unsound. After making the declaration of alienage the person is, by s. 3 [U.K.], " to be regarded as an alien, and as a subject of the State to which he originally belonged ". To such a provision, made under such circumstances, the principle that alienage means alienage throughout the dominions must apply.

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There is a convention : and one which would almost certainly be applied to the Crown Colonies : and to which, more probably than not, the self-governing Colonies would have adhered ; or, as in the case of the convention with the United States, it would apply to all the Colonies without adherence. The section would have no meaning if it did not assume that Canada had adhered to, or was bound by, the convention.

Question of adherence of Canada to convention.

It seems probable, from the reference to the Order in Council declaring " that such convention has been entered into ", that the Canadian section was drafted with the United States convention specially in view.

An act done under a convention must have the same area of effectiveness as the convention under which it is done : and it is suggested, therefore, that the declaration of alienage made in virtue of the convention releases him from all and any of the naturalizations which he may have contracted in the Colonies. From this point of view the Canadian section is unnecessary.

But it may well be that a subject of the State with which the convention has been entered into has not been naturalized in the United Kingdom, but only in Canada : and the question then arises whether the section is necessary to enable this Canadian naturalized subject to avail himself of the convention, and make the declaration in Canada ; for the basis of colonial naturalization is that a person may be an alien in the rest of the Empire, but a subject in one Colony. Even on this ground it does not appear to be necessary. There is, in the first place, a question on the construction of s. 3 [U.K.] which shows that it has a wider operation than the United Kingdom. It is couched in the most general terms. It does not refer to the subjects of the foreign State as having been naturalized in the United Kingdom, but as having " been naturalized as British subjects ". This must be taken to mean, naturalized as British subjects as contemplated by the Act : that is, either in the United Kingdom under s. 7 or in the Colonies under s. 16 : in the last case a limited British nationality it is true, but still a British subject *

Second interpretation : expatriation in Canada necessary where person naturalized only in Canada.

[*cf.* p. 241.]

But not only does the strict construction of the section support the view that it applies to the dominions, but the procedure

Scope of s. 3 [U.K.]

[*see* Chapter XV.]

* I have pointed out in the chapter on Colonial Naturalization that this is the only indication in the Act that the person naturalized in the Colonies was intended to be made a British subject. The argument in the text proceeds on this basis.

which it provides for carrying the convention into effect is conceived on the same principle. The Act has been careful to provide that the declaration of alienage may be made as well in the Colonies as in the United Kingdom. This recognises the fact that some persons desirous of availing themselves of the convention may be resident in the Colonies: and the whole theory on which the Act is based, points to the conclusion that these would be persons naturalized in the Colony in which they are resident. The English section therefore covers the whole ground, and it is submitted that the Canadian section, from this point of view also, is unnecessary.

Declarations of alienaage under U.K. Act may be made in Colonies.

The fifth section of the Canadian Act is still more difficult to understand. It allows the declaration of alienage to be made in the United Kingdom, in a Colony or abroad, in the same terms as in the second part of s. 3 of the English Act. Quite apart from the question whether the section itself is necessary, this provision would seem to be in excess of the territorial legislative powers of a Colony.

Declaration of alienage in Canada by natural-born British subjects who are also subjects of a foreign State. [Canadian Act. s. 6.]

This section, which reproduces textually s. 4 [U.K.], in no way deals with the privileges of naturalization. It is more than doubtful whether it does not fall outside the general powers of a Colonial Legislature. The question involved is, whether the fact that colonial naturalization may create a limited British nationality makes an alienage limited to the Colony possible.

Relief against double nationality resulting from common law cannot be granted by Colony.

What the section professes to do is to give relief against the double nationality created by the common law, in so far as Canada is concerned, in the same way as relief is given under similar circumstances by the Imperial Act. But what it actually does is to alter the law of British nationality in its application to Canada. The effect of the section is to allow the British subject to elect between his two allegiances, and to withdraw from his British allegiance only so far as Canada is concerned. It is more than doubtful whether a Colony can do this, even supposing the effect could be limited to the Colony itself. An incidental consequence would be that he would withdraw himself from the operation of those general extra-territorial laws of the United Kingdom which, though not extended to the Colonies, apply to

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British subjects beyond the United Kingdom. Alienage would therefore seem from its nature to be incapable of intermittent application. But apart from what appear to be the two inherent vices of the section, these other grounds militate against it : the question is fully dealt with by the English Act : alienage is not a subject for colonial legislation.

In the consideration of s. 4 [U. K.], birth within the United Kingdom was alone taken account of : but now that the question of nationality by birth in the dominions has been settled, the full effect of that section may be considered. It is based on the broad fact that birth within the dominions makes a person a natural-born British subject : therefore a person who is natural-born owing to birth in Canada comes within the section, and he may make the declaration "in manner aforesaid" : that is, as provided in s. 3 [U. K.]. The Imperial Act has recognised that the conditions of the question with which the section is dealing are such, that it is necessary to provide means for persons to avail themselves of it in the Colonies : it has therefore provided that in this case also, the declaration of alienage may be made in the Colonies Therefore, not only is the case contemplated by the Canadian Act already provided for, but also the machinery for giving effect to the provision.

English Act contemplates the case of common law nationality resulting from birth in Colony.

The Canadian section in like manner refers to the provisions of s. 5 [C] for making the declaration out of Canada. This is still more difficult to understand than in former case, and leads to this strange result : the consequence of a declaration of alienage made in Canada under the Imperial Act is, that the person ceases to be a British subject generally : whereas the intended consequence of a declaration made in the United Kingdom under the Canadian Act is, that the person should cease to be a British subject only in Canada.

Confusion resulting from Canadian provision that declaration may be made in United Kingdom.

The second part of s. 6 [C] reproduces the second part of s. 4 [U. K.], which deals with the relief from double nationality caused by the statute law. It is difficult enough to understand in the English Act, and it would profit little to add to the existing complexity by a further discussion as to its possible effect in the Canadian Act.

Alienage in Canada of British subject naturalized in a foreign State [Canadian Act, s. 7].

This section corresponds with s. 6 [U. K.], but it is very difficult to follow. Every British subject who becomes naturalized in a foreign State is deemed by the Imperial Act to have become ex-patriated, for it is expressly provided that he has ceased to be a British subject: which must mean that he is not a British subject in any part of the dominions. It is difficult therefore to find the reason for the provision in the Canadian Act that "within Canada" he shall be deemed "to have ceased to be a British subject, and shall be regarded as an alien". It is the same question which has arisen under the other sections, in yet another form: and, as in those sections, it would appear that the matter is fully dealt with by the English Act.

Ex-patriation under English Act takes effect throughout the dominions.

The second part of the Canadian section, as the alteration of the sectional heading from "Ex-patriation" to "Re-patriation" shows, misses entirely the meaning and object of the proviso to s. 6 [U. K.], on which it is modelled. There had been a complete change effected in the meaning of naturalization in a foreign State. Ex-patriation had never been possible in English law till it was introduced by the Act of 1870, and a provision was inserted dealing with existing certificates, enabling them by a declaration of nationality to be got rid of, the person *remaining* a British subject: or in the absence of such a declaration, to become equivalent to the new certificates: clearly not a question of re-patriation.

Canadian Act treats proviso of s. 6 [U.K.] as re-patriation.

The effect of the proviso to s. 6 [U. K.] on the Colonies was, that persons who made the declaration of British nationality *remained* British subjects, while those who did not *became* aliens, throughout the dominions. Nothing connected with colonial naturalization was involved, but merely a special question of nationality which arose in consequence of the Act of 1870, and it is difficult to find any reason to justify a similar provision in a colonial Act. Apart from this, however, the naturalization of British subjects in foreign countries cannot concern the Colonies. To attach consequences to ex-patriation, even limited to the Colony, in no way falls within the powers of a Colonial Legislature.

Naturalization of aliens in Canada. [Canadian Act, ss. 8—15].

These sections deal with the grant and effect of the certifi-

cate of naturalization. The period of prior residence required is three years. The qualification of the effect of the certificate in the person's former State is introduced : the meaning of this has already been considered.

Canadian naturalization. [*cf.* p. 242.]

Certificate of naturalization where nationality is doubtful. [Canadian Act, s. 16].

Quieting of doubtful nationality in Canada by special certificate of naturalization. [*see* Chapter XIII.]

This section reproduces the third paragraph of s. 7 [U. K.], and it will be similarly interpreted. The certificate having no effect outside Canada, the doubts as to British nationality will only be quieted in Canada.

The section as we have seen, deals with naturalization and not with nationality : it falls, therefore, within the colonial powers of legislation granted by s. 16 [U. K.].

Re-admission of statutory aliens to British nationality in Canada. [Canadian Act, ss. 18, 19.]

Doubtful whether Colonial Act can re-admit to British nationality.

These sections deal with re-patriation in the same way as it is dealt with in s. 8 [U. K.] : the definition of " statutory alien " is however removed from the section, where it stands in the English Act, to the definition clause ; but it is doubtful whether this makes the question who are statuory aliens any clearer. But this section seems also to fall within the general rule that nationality cannot be dealt with by a Colony, except as it may result from naturalization ; nor does it come within the terms of s. 16 [U. K.]. For though the conditions on which they are granted are the same, there is the fundamental difference which has already been explained, between the certificate of re-admission to British nationality, and a certificate of admission to the rights of a British subject, in other words, a certificate of naturalization.

[*see* Chapter XI.]

Conventions with foreign States requiring a special period of residence in Canada. [Canadian Act, s. 20.]

Provision for modifying period of residence in Canada where required by naturalization convention.

This section introduces a subject which is foreign to the English Act, but does not present any difficulty. It pre-supposes a convention between Great Britain and a foreign Power " to the effect that the subjects of that State who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign State. " This means a convention for the mutual recognition of naturalization, and consequent expatriation, and differs essentially from the conventions dealt with in s. 4 [C] and s. 3 [U. K.], which are for the mutual recognition of re-

patriation into the naturalized person's former State. The section then proceeds: When such a convention or the laws of the foreign State require residence in Canada of more than three years " as a condition precedent to such subjects divesting themselves of their status as such foreign subjects ", the Canadian law, which only requires three years residence, is to be modified accordingly.

Subjects of the contracting State who have already been naturalized under the three years rule, are to be allowed to come in under the convention by s. 21 [C], on fulfilling the conditions laid down.

Status of married women. [Canadian Act, s. 22.]

Status of married women an imperial not colonial question.

This section reproduces s. 10 (1) [U. K.], and lays down the broad principle that married women in Canada are to be deemed subjects of the State to which their husbands belong. These appear to be three reasons which militate against the validity of this section: first, it deals with nationality: secondly, it certainly is not within s. 16 [U. K.]: thirdly, even assuming it to be within the legislative powers of a Colony, it overlaps the English Act, and is therefore unnecessary. It has been pointed out that s. 10 (1) [U.K.] has a twofold operation: it applies to a foreign woman marrying a British subject, and also to a British woman marrying a foreigner. It is therefore declaratory both of nationality and also of alienage: and, for reasons already given, it is submitted that both the rules it establishes are applicable thoughout the dominions.

[*cf.* p. 57.]

Provisions of U.K. Act as to nationality of widows and children reproduced: but of doubtful validity.

The provisions of s. 10 (2), (3), and (4) [U.K.], are reproduced in ss. 23, 24 and 25 [C.]. They deal with the re-admission of widows to British nationality within Canada: with the alienage within Canada of children of British subjects who have become aliens in pursuance of the Act: and with the resumption of British nationality within Canada of the children of aliens who have been re-admitted to British nationality within Canada. The remarks which have been already made apply to all these provisions, which seem of doubtful validity.

Children of persons naturalized in Canada also naturalized.

The provision as to the children of persons who are naturalized in Canada, s. 26 [C] reproducing s. 10 (5) [U.K.], that they also shall be deemed to be naturalized British subjects within Canada, falls naturally within the powers of naturalization granted to the Colonies.

Chapter XVII.

Of the Conventions with the United States.

Chapter XVII

Convention with United States passed on the day following the coming into force of the Act of 1870;

The Naturalization Act became law on 12th. May 1870, and on the 13th., a convention "*Relative to Naturalization*", between Great Britain and the United States of America, was signed in London, so bringing to a conclusion the long-standing dispute between the two countries, an outline of which will be found in Sir Alexander Cockburn's " Nationality ".

The object of this convention was to settle the troublesome questions of nationality which past emigration had produced, and to lay down principles for the future.

Although the Act contemplates the settlement of many matters by treaty, this convention with the United States is the only one which has been entered into. It is important not merely because it establishes the law as between the two countries, but also because some of the provisions do not seem to be quite in harmony with the principles established by the Act. I shall however content myself with pointing out these divergencies as they arise, without pursuing the matter further. The extension of the convention to the dominions also raises very important issues. It is perhaps to be regretted that the Act of 1872, which settled doubts as to one of the articles, did not extend to the whole convention.

The articles are reciprocal, being drafted in two parts. Each part however depends on a different section of the Act, according as it deals with British subjects or citizens of the States. I propose therefore to examine the two parts of each article separately.

Preamble.

in order to settle difficulties which had arisen in consequence of emigration between the two countries.

The object of the convention is declared to be " to regulate the citizenship of British subjects who have emigrated to, or who may emigrate " to the United States: and conversely, the citizenship of citizens of the United States who have emigrated to, or who may emigrate to the British dominions. The settlement of the difficulties which had arisen from the law as it was prior to 1870 was therefore the manifest object of the convention; the Act just passed would, it was hoped, with the convention as its auxiliary, prevent similar difficulties from arising in the future.

Article I [*provision as to the past*].

British subjects who have become and are [still] naturalized according to law within the United States, shall, subject to the provisions of article II, be held by Great Britain "to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain".

Mutual recognition of existing naturalizations.

This article corresponds with s. 6 of the Act, which not merely recognised for the first time the capacity of a British subject to renounce his allegiance, but also gave effect to naturalizations in the past, hitherto ignored. There was in the section a saving clause allowing a declaration of British nationality to be made within two years, and this is itself saved by the reference to the provisions of article II of the convention.

The article does not enter into the minor details which are prescribed by the section: *i.e.* whether the person was in the United States at the time of the naturalization, whether he was under any disability, or whether the naturalization had been voluntary. Everything was taken for granted: probably for the very practical reason that if the law had been strictly followed, endless complications, enquiries, and expense, would have been the result. The only condition was that the naturalization should have been according to the law of the United States; and this was one which the States would naturally have insisted on. This variation between the convention and the section must have been of great importance to many thousands of persons for whose benefit both the Act in part, and the convention as a whole, was intended.

Variance between article and s. 6.

The section appears to go further than the article: for it provides for a retroactive recognition of existing naturalizations. The person was to be deemed to have ceased to be a British subject from the time of his naturalization, and, so far as Great Britain was concerned, the absence of any reference to this in the article, would probably not have prevented the statutory provision from coming into operation. So far as the United States were concerned, it would seem as if the law was sufficient for the purpose, so as to render a retroactive provision in the article unnecessary.

Chapter XVII

Reciprocal provision. (**Article I.**)

Citizens of the United States who have become and are [still] naturalized according to law within the British dominions, shall, subject to the provisions of article II, be held by the United States " to be in all respects and for all purposes British subjects, and shall be treated as such by the United States ".

Variance between article and 5th. para. of s. 7.

This provision of the convention seems to be at variance with the terms of the 5th. paragraph of s. 7 of the Act, which provided the method by which aliens naturalized prior to the passing of the Act could obtain certificates under the Act. They were compelled to apply for the new certificate under the Act, and the Secretary of State in granting it had no discretion as to terms and conditions, which were to be the same as in the case of other aliens applying to be naturalized.

Consequence of article on existing naturalizations of U. S. citizens in U.K.

The effect of the article was to give increased privileges to the holders of the old certificates without any formality, or even without any application for that purpose. So far therefore as the United States were concerned, the continuance side by side of the old and the new certificates was avoided.

Article I [*provision as to the future*].

British subjects who shall become and are [*i. e.* continue to be] naturalized according to law within the United States, shall be held by Great Britain " to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain ".

Mutual recognition of future naturalizations.

This part of the article depends on the general provisions of s. 6, which deal with the capacity of a British subject to renounce his allegiance : " according to law " in this case, therefore, probably means that the conditions of s. 6 must be complied with : that is to say, the person must have been within the United States at the time of his naturalization, was not under any disability, and was naturalized voluntarily. The qualification as to his former State drops out, as there is " a treaty to the effect " that he shall cease to be a subject of the United States.

The sentence " subject to the provisions of article II " finds no application to the provisions for the future.

Reciprocal provision. (**Article I.**)

Citizens of the United States who shall become and

are [*i. e.* continue to be] naturalized according to law within the British dominions, shall be held by the United States "to be in all respects and for all purposes British subjects, and shall be treated as such by the United States".

This article in the first place puts into treaty form the provisions of s. 7 of the Act, which provides generally for the naturalization of aliens into the United Kingdom. The naturalization must be according to the law of England: the requirements of the section must therefore be fulfilled. The qualification as to the effect of the certificate in the person's former State again drops out, as this convention is to the effect that he shall cease to be a citizen of the United States: it therefore ensures their recognition a British subjects by their former State.

Variance between article and narrow construction of s. 6.

There can be no question that this part of the article is in conflict with the narrow construction put upon the effect of the certificate granted in the United Kingdom. It may perhaps be taken as throwing some light on the intention of these who drafted the Act, and be used as an argument in favour of the operation of this certificate at least throughout the dominions.

Article II. [*provision as to the past.*]

Such British subjects as aforesaid who have become and are [still: *i. e.* on 12th May 1872] naturalized within the United States may renounce their naturalization, and resume their British nationality, within two years after 12th May 1870.

Renunciation of existing naturalization within two years.

This article carries into effect with regard to the United States the first proviso of s. 6, which enabled British subjects generally who had been naturalized before the Act, to resume their British nationality within two years after the passing of the Act. The qualification that the person would not be deemed a British subject in the naturalizing State, unless there were a treaty to the effect that he should cease to be a subject of that State, therefore disappears.

The provision that these British subjects "shall be treated as such by the United States", which is inserted in article I, is omitted: but it is implied. The words "as aforesaid" relate to the naturalization "according to law" in the previous article.

There is an important variation between the article and the

section. The full effect of re-patriation under the circumstances to which s. 6 applied, was that the person was deemed to have been continually a British subject: he "remained" a British subject. But under this article it was only stipulated that he should "resume" his British nationality. Over thirty years have passed since the time for making these declarations elapsed, and no case of difficulty would appear to have arisen. The divergence between the convention and the Act may therefore be noted as of historical interest: possibly the Act required more than the United States were disposed to give. For the States it meant undoing the consequences of a naturalization which they deemed valid, in spite of the British rule which held the person still a a British subject. It is, however unnecessary to go deeply into the possible consequences.

Variance between article and proviso to s. 6.

Reciprocal provision. (Article II.)

> Such citizens of the United States as aforesaid who have become and are [still: *i.e.* on 10th August 1872] naturalized within the British dominions, may renounce their naturalization, and resume their nationality as citizens of the United States within two years after the exchange of the ratifications of the convention.

This part of the article depends on s. 3 of the Act, deals and with existing naturalizations of citizens of the States in Great Britain. The section requires a limit of time to be provided in the convention: and the same period of two years was adopted as in the case of British subjects naturalized in the United States: but the date of the exchange of the ratifications was taken for citizens of the United States; whilst that of the passing of the Act was, as the Act itself required, taken for British subjects. The probable explanation of this is that in England the signing of the convention immediately followed the passing of the Act; whereas in the States the necessary legislation immediately followed the exchange of ratifications.*

Variation of date of commencement of "two years" in U. S. and U. K.

The provisions of s. 3 and the proviso of s 6 do not, however, correspond. The latter dealt only with existing naturalizations of British subjects abroad: whereas s. 3 does not specially contemplate existing naturalizations of foreigners in Great Britain. But

* I have depended on my memory for this statement, which I have therefore put in the form of a suggestion, as I have no means at hand for verifying its accuracy.

the language is general, and must be held to include arrangements as to the past as well as to the future.

The last clause of the article provided that an agreement should be come to as to the manner in which the renunciation of naturalization contemplated should be made in Great Britain and the United States respectively : and a supplementary convention was signed at Washington on 23rd. February 1871.

Manner in which renunciation to be made settled by supplementary convention ;

So far as original British subjects were concerned, it provided that the declaration should be made, if in the United Kingdom, in duplicate : if in the dominions, in triplicate : and if out of the dominions, in triplicate, before the officers respectively who are mentioned in the second proviso of s. 6. The provisions of the Act were therefore complied with.

But so far as original citizens of the United States were concerned, the renunciation of British nationality was to be made before the corresponding officers of the United States. This had not been contemplated by s. 3 of the Act, which only allowed declarations of alienage to be made before the same British officers as in the case of declarations made by British subjects. It was obviously necessary therefore that this procedure should be validated, for it affected persons who, until they had made the act of renunciation, were still British subjects. This was done by the Naturalization Act of 1872, the supplementary convention being inserted in the schedule.

subsequently validated by Act of 1872,

35 & 36 Vict. c. 39, s. 2.

Confirmation of renunciation of nationality under the convention.

Any renunciation of naturalization or of nationality made in manner provided by the said supplementary convention by the persons and under the circumstances in the said convention in that behalf mentioned shall be valid to all intents, and shall be deemed to be authorised by the said Naturalization Act 1870. This section shall be deemed to take effect from the date at which the said supplementary convention took effect.

with retroactive effect.

Article III. [*provision as to the future.*]

If any such British subject as aforesaid, naturalized in the United States, should renew his residence within the British dominions, he may be re-admitted to the character and privileges of a British subject on his own application, and on such conditions as the British Government may impose, and the United States shall not claim him as a citizen on account of his former naturalization.

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Renunciation of naturalization in the future.

Article II having dealt with the past, this article proceeds to provide for the future. The grammatical relation of the words "any such British subject as aforesaid" to the "British subjects" referred to in article I is, however, rather forced.

The difficulty which arises under this article has already been indicated. The Act provides in s. 3 a simple means by which naturalized aliens may divest themselves of their British nationality, when the matter has been agreed to by a convention. But no corresponding provision is made in the Act, by which British subjects who have become naturalized in the other State may resume their nationality. Re-admission to British nationality is only allowed by means of the cumbersome process provided in s. 8; presumably, therefore, the procedure traced out by that section would have to be followed by British subjects, in spite of the evident intention of the article. The conditions of resumption may be imposed by the British Government, but it is doubtful whether any other conditions than those provided in s. 8 could be allowed.

Simple procedure of s. 3 not reciprocal:

no provision for British subjects.

The convention fulfils the requirement of the second paragraph of s. 8, and ensures the recognition of the re-admitted British subject as such by the United States; he will not be claimed as a citizen on account of his former naturalization: that is, he has ceased to be a citizen "in pursuance of a treaty to that effect".

Reciprocal provision. (Article III.)

> If any such citizen of the United States as aforesaid naturalized in the British dominions, should renew his residence in the United States, he may be re-admitted to the character and privileges of a citizen of the United States on his own application, and on such conditions as the United States Government may impose, and Great Britain shall not claim him as a British subject on account of his former naturalization.

Conventions as to the future included in s. 3.

It is been suggested, in connection with article II, that s. 3 of the Act contemplated conventions dealing with naturalizations in the past, as well as those dealing with naturalizations under the Act. The existence of article III seems to show conclusively that this was the intention, for there is no other section of the Act on which it could rest. There is however one difficulty in the way of this construction. The section contemplates the provision

in the convention of a limit of time within which the declaration of alienage may be made. No such provision being made in article III, it must have been assumed that the imposition of such a limit was facultative. In conventions, however, which may be made in the future, it is possible that a special provision as to existing naturalizations may be inserted, in which case the imposition of the limit of time would be necessary.

Although no condition is imposed by s. 3, there seems to be no reason why conditions should not be settled by the convention itself. Resumption of residence in the person's former State is the natural one which would be required by person's former State. The conditions are such as the United States Government may impose, and nothing is said as to those which the British Government might impose. The declaration of alienage required by s. 3 would therefore be necessary to complete the renunciation of the British naturalization; but the difficulty which was settled by the supplementary convention in the case of renunciations under article II still remains in this case. The declarations of alienage must, therefore, be made before the British officers specified in the second paragraph of s. 3.

Declarations under this article not included in supplementary convention.

APPLICATION OF THE CONVENTION TO THE COLONIES.

So far as the Colonies are concerned, the customary adherence of the self-governing Colonies to this convention was not required: it therefore applies to all the Colonies in a general way.

The constitional principle underlying this part of the convention is not quite the same as that which governs the operation of conventions in the United Kingdom. The question is abstruse, and I do not propose to do more than indicate it, and this even with the greatest caution.

The application of convention to the Colonies.

Variances between a convention and the Act of Parliament on which it depends require validation, as the Naturalization Act of 1872 shows. How far the Sovereign has any latitude in dealing by convention with matters which do not come within the statute is a question of some nicety: and it may be that some of the variances indicated in the foregoing analysis of the articles of the convention may in this find their warrant. But, unless the subject is expressly dealt with by the statute, it by no means

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follows that the Sovereign may not deal by convention with the questions which give rise to these variances on his own initiative, so far as the Colonies are concerned.

Effect of variances in colonial application.

To make this clearer by example : whether the suggestions made above with regard to article 3 of the convention are sound or not, it does not follow that the reciprocal provision so far as it relates to the Colonies would be governed by the same rule : in which case it would be within the Sovereign's power of making treaty-law to agree that renewal of residence in the United States should be sufficient for renunciation of naturalization in any Colony.

Apart from the constitutional question, there are express references to the dominions, the articles applying to the Colonies in two ways : the one indirect, the other direct.

First, as to the indirect application.

Special indirect application to Colonies.

The recognition of the alienage of British subjects who become naturalized in the United States, and their treatment thenceforward as citizens of the United States, is to be "by Great Britain" [article I] : that is to say, this treatment is to be accorded in the Colonies as well as in the United Kingdom.

The effect of the resumption of nationality within two years by British subjects who had already been naturalized in the United States [article II], was also stated to be "resumption of British nationality ", and would have had effect in the Colonies.

The first two articles are, in this respect, based on the application of the law of British nationality throughout the dominions.

Special direct application to Colonies.

Secondly, as to the direct application, which results from the express use of the words British dominions in all the reciprocal provisions. Thus, citizens of the United States naturalized according to law in the dominions are to be held to be British subjects " in all respects and for all purposes " : and treated as such by the United States [article I]. The power of renunciation of naturalization within two years was also applied to naturalizations generally in the Colonies. If the corresponding provision in the first article of the convention as to the effect of naturalization in the United Kingdom is at variance with the narrow construction put upon s. 7 of the Act, these provisions as to the effect of colonial naturalization would seem to be wider in scope than is authorised by s. 16 of the Act.

Article III stands on a somewhat different footing. For, apart from what has been said above on the subject, with regard to resumption of nationality, residence in the dominions is recognised by the Act, though perhaps hardly to the general extent provided in the convention. But the statement in the reciprocal provision that "Great Britain shall not claim him [*i.e.* the citizen of the States formerly naturalized in any Colony] as a British subject on account of his former naturalization", is based on a more extended effect of the colonial certificate than is warranted by the Act.

Questions involved in extension of Article III to Colonies.

CONVENTION RELATIVE TO THE DISPOSAL OF REAL AND PERSONAL PROPERTY.

Another convention was entered into between Great Britain and the United States, signed at Washington, 2nd. March, 1899, in order "to improve the condition of the subjects and citizens of each of the respective countries, in relation to the tenure and disposition of real and personal property situated, or being within, the territories of the other"; and also "to authorise the representation of deceased persons by the Consuls of their respective nations in the settlement of estates".

The convention, though it does not deal with naturalization, must be referred to this chapter, as it supplements the provisions of s. 2 of the Naturalization Act, as to an alien's capacity to hold and transmit property, and is also the first convention entered into under s. 4 of the Domicile Act, 1861.

[set out in Appendix to this Part.]

24 & 25 Vict. c. 121.

The following is a brief resumé of its provisions.

Article I.—Real property in one State passing by the law of that State, to a subject or citizen of the other who is disqualified by such law from holding such property, is allowed three years (or longer, if circumstances require it) to dispose of it: with liberty to withdraw the proceeds without restraint or interference, or imposition of additional duties.

Provisions of convention.

Article II.—Full power of disposing of personal property in one State, by testament, donation or otherwise, is granted to the subjects or citizens of the other: the right of succession to, or possession of, and subsequent disposal of, such property is to be independent of residence, and not to be liable to additional duties.

Article III.—In case of death without known heirs or testamentary executors, the competent local authorities in each coun-

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try are to inform the nearest Consular officer of the other, who is to be entitled to appear in all proceedings on behalf of the absent heirs or creditors until they are otherwise represented.

[*cf.* p. 250.]

In connection with this article the true meaning of s. 3 of the Domicile Act, 1861, becomes of importance.

By Article IV, the convention may be applied to the British Colonies and American territories beyond the seas : and notice of adhesion may be given on behalf of any British Protectorate or sphere of influence, or on behalf of the Island of Cyprus. Article V provides for the most-favoured nation treatment " in all that concerns the right of disposing of every kind of property. real or personal ".

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Of the Remaining Provisions of the Naturalization Act.

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A few provisions of the Act which have not been dealt with in the preceding chapters remain to be considered, as well as certain enactments which are incorporated with them.

33 & 34 Vict, c. 14 : Title, preamble, and s. 1.

An Act to amend the Law relating to the legal condition of Aliens and British Subjects.

Whereas it is expedient to amend the law relating to the legal condition of Aliens and British subjects : Be it enacted :—

Short Title

1.—This Act may be cited for all purposes as "The Naturalization Act, 1870".

Want of relation between title and short title of Act.

The want of relation between the title of the Act and its short title is one of its curious features; but we have become familiar with its twofold nature ; and have come to look on an enactment which commences by an alteration of the common law as to the right of aliens to hold real property in the United Kingdom, and does not deal with naturalization till the middle, as an Aliens Act, as in fact it is. The legal condition of aliens is amended as the preamble declares it expedient to do : but it must be confessed that the "legal condition of British subjects" professes to give too wide a scope to the intention of the legislator ; the nature of the amendments effected in their condition might have

been indicated; or at least some such words as "in certain respects" might have been introduced.

33 & 34 Vict. c. 141, s. 11.

Regulations as to registration.

One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters:—

Regulations to be made under Act of 1870.

(1) The form and registration of declarations of British nationality:

(2) The form and registration of certificates of naturalization in the United Kingdom:

(3) The form and registration of certificates of re-admission to British nationality:

(4) The form and registration of declarations of alienage:

(5) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions. [*remainder, rep.* 55 & 56 Vict. c. 23, s. 26.]

(6) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act:

(7) With the consent of the Treasury the imposition and application of fees in respect of any registration authorised to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorised to be made or granted by this Act:

The said Secretary of State, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Effect of regulations in Colonies.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

The words deleted from sub-s. 5 were the following: "and of the marriages of persons married at any of His Majesty's Embassies or Legations".

55 & 56 Vict. c. 23.

All questions connected with marriages of British subjects abroad at the Embassies or Legations are now governed by the Foreign Marriage Act, 1892, by which the above words were repealed.

[*see* Chapter XV.]

So much of the last paragraph as relates to the application of the regulations to the Colonies has been considered in the chapter on Colonial Naturalization.

The provisions contained in the last two paragraphs of the

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section are extended to the regulations with regard to oaths which the Secretary of State is empowered to make under the Naturalization Oath Act, 1870.

33 & 34 Vict. c. 102. [set out on p. 107.]

The regulations which have been made under the above two sections include Forms, and also "Instructions to Applicants" for the various certificates; they will be found at the end of the Appendix following this chapter.

33 & 34 Vict. c. 14, s. 12.

Regulations made by Act of 1870.

Regulations as to evidence.

The following regulations shall be made with respect to evidence under this Act:—

Any declaration authorised to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorised by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned:

(2) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorised by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:

(3) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy one of Her Majesty's Principal Secretaries of State, or by any person authorised by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:

(4) Entries in any register authorised to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the said Secretary of State authorised to be inserted in the register:

(5) The Documentary Evidence Act, 1868, shall apply to any regulation made by the Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

31 & 32 Vict. c. 37.

The Documentary Evidence Act 1868, which is extended by sub-s.(5) to regulations made under the Act by the Secretary of State, provides the method of proving them. The material provisions of the Act are the following:—

31 & 32 Vict. c. 37, ss. 2–6.

How regulations under the Act are to be proved.

2.—... Prima facie evidence of any... regulation issued... after the passing of this Act by or under the authority of any such Department or Officer as is mentioned in the first column of the schedule hereto, may be

given in all Courts of Justice, and in all legal proceedings whatsoever, in all or any of the modes hereinafter mentioned ; that is to say:

(1) By the production of a copy of the Gazette purporting to contain such... regulation. 31 & 32 Vict. c. 7.

(2) By the production of a copy of such... regulation purporting to be printed by the government printer, or, where the question arises in a Court in any British Colony or Possession, of a copy purporting to be printed under the authority of the Legislature of such British Colony or Possession.

(3) ... by the production of a copy or extract purporting to be certified to be true by the person or persons specified in the 2nd column of the said schedule in connection with such Department or Officer.

Any copy or extract made in pursuance of this Act may be in print or in writing, or partly in print and partly in writing.

No proof shall be required of the handwriting or official position of any person certifying in pursuance of this Act, to the truth of any copy of or any extract from any...regulation.

3.—Subject to any law that may be from time to time made by the Legislature of any British Colony or Possession, this Act shall be in force in every such Colony or Possession. Act to be in force in Colonies.

4.—If any person commits any of the offences following, that is to say :— Forgery of regulations : or tendering forged documents.

(1) Prints any copy of any... regulation which falsely purports to have been printed by the government printer, or to be printed under the authority of the Legislature of any British Colony or Possession, or tenders in evidence any copy of any... regulation which falsely purports to have been printed as aforesaid, knowing that the same was not so printed : or

(2) Forges or tenders in evidence, knowing the same to have been forged, any certificate by this Act authorised to be annexed to a copy of or extract from any... regulation :

he shall be guilty of felony, and shall on conviction be liable to be sentenced to penal servitude. (*remainder, rep.* S. L. R. Act, 1893.)

* * * *

5.—" British Colony and Possession " shall for the purposes of this Act include the Channel Islands, the Isle of Man, and such territories as may for the time being be vested in His Majesty by virtue of any Act of Parliament for the government of India, and all other His Majesty's dominions. Definitions.

" Legislature " shall signify any authority other than the Imperial Parliament or His Majesty in Council competent to make laws for any Colony or Possession.

* * * *

" Government printer " shall mean and include the printer to His Majesty and any printer purporting to be the printer authorised to print the Statutes, Ordinances, Acts of State, or other public Acts of the Legislature of a British Colony or Possession, or otherwise to be the Government printer of such Colony or Possession

" Gazette " shall include the London Gazette, the Edinburgh Gazette, and the Dublin Gazette, or any of such Gazettes.

6.—The provisions of the Act shall be deemed to be in addition to, and not in derogation of, any powers of proving documents given by any existing statute or existing at common law. Act to be commulative.

Chapter XVIII Schedule.

	NAMES OF DEPARTMENT OR OFFICER.	NAMES OF CERTIFYING OFFICERS.
31 & 32 Vict. c. 37.	Secretaries of State.	Any Secretary or Under Secretary of State.

45 & 46 Vict. c. 9. The Documentary Evidence Act, 1882, extends the same provisions to documents printed under the superintendence of His Majesty's Stationery Office.

33 & 34 Vict. c. 14, s. 17.

Definitions in Act of 1870.

Definition of terms. In this Act, if not inconsistent with the context or subject matter thereof,—

'Disability" shall mean the status of being an infant, lunatic, idiot, or married woman :

"British Possession" shall mean any Colony, plantation, island, territory, or settlement within Her Majesty's dominions and not within the United Kingdom, and all territories and places under one Legislature are deemed to be one British Possession for the purposes of this Act :

"The Governor of any British Possession " shall include any person exercising the chief authority in such Possession :

" Officer in the Diplomatic Service of Her Majesty " shall mean any Ambassador, Minister, or Chargé d'Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d'Affaires, or Secretary of Legation to execute any duties imposed by this Act on an officer in the Diplomatic Service of His Majesty :

" Officer in the Consular Service of Her Majesty " shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

Disability. Of the definitions, the first which gives the meaning of " disability " might well have been omitted. It is a term which the law interprets for itself without the necessity of statutory assistance. It errs too on the side of incompleteness. The difficulties which arises in connection with the subject are discussed in the chapter on Ex-patriation.

[*cf.* p. 138.]

32 & 34 Vict. c. 14. s. 18.

Repeals of previous Acts by Act of 1870.

Repeal of Acts. The several Acts set forth in the first and second parts of the schedule annexed shall be wholly repealed, and the Acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned ; provided that the repeal enacted in this Act shall not affect.—

(1) Any right acquired or thing done before the passing of this Act :

(2) Any liability accruing before the passing of this Act :

(3) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the passing of this Act :

(4) The institution of any investigation or legal proceeding or any

other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid. Chapter XVIII

The Acts repealed date back to the 7th year of James I, when the condition of naturalization was that the person, in addition to taking the oaths of allegiance and supremacy, should receive the Sacrament of the Lord's Supper. They include also certain Acts of the Irish Parliament, beginning with one of 14 & 15 Charles II, when Ireland, like Jamaica, needed strangers to inhabit it and plant its waste places, and offered Irish nationality in return.

NOTE

on the Repealed Acts.

It is impossible not to disturb the slumbers of these old statutes, and of others some time since repealed, if only for the sake of the light they must throw upon a question whose own history is mixed up with the history of the nation. Most of the points, it may be admitted, are now but of antiquarian interest : but one is the unique example of a branch of the subject, now non-existent and hitherto unnoticed, but which it is presumed might at any time be revived.

These statutes involve four different principles.

First :—the condition of professing the Protestant religion.

7 James I, c. 2 : [1609], put the naturalization of strangers and the restoration to blood of persons attainted on the same footing. The preamble ran as follows—

> Forasmuch as the naturalizing of strangers, and restoring to blood persons attainted, have been ever reputed matters of mere grace and favour, which are not fit to be bestowed upon any others than such as are of the religion now established in this realm :—

and it provided that—

> no person of what quality condition or place soever, being of the age of 18 years or above, shall be naturalized, unless he have received the Sacrament of the Lord's Supper within one month next before any bill exhibited for that purpose, and also shall take the oath of supremacy, and the oath of allegiance, in the Parliament House, before his bill be twice read.

6 Geo. IV, c. 67 : [1825]

The condition of the Sacrament was no longer insisted on : and the oaths may have been taken within one year before any Justice of the Peace, Mayor, or other Chief Magistrate in any County or Town : or before a Judge in any Colony or foreign Possession, a point which deserves special notice.

Secondly :— the limitation of the powers of Parliament in passing Naturalization Acts.

NOTE on the Repealed Acts, *contd.*

The Act of Settlement (12 & 13 Will. III, c. 2) : [1700], as we know, enacted that persons naturalized should not—

be capable to be of the Privy Council, or a member of either House of of Parliament, or to enjoy any office of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown, to himself or to any other or others in trust for him.

1 Geo. I, st. 2, c. 4 : [1714], declared that the intention of the Act of Settlement was not to disable or incapacitate persons who were already in enjoyment of those privileges : but provided that there should be a prohibitory clause to the same effect in all naturalization bills introduced into Parliament.

13 Geo. III, c. 25 : [1773], derogated from this principle in favour of persons who had become natural-born subjects by naturalization in the American Colonies, in virtue of 13 Geo. II. c. 7, or 2 Geo. III, c. 25 (to be presently referred to under the fourth category), to the extent that they were to—

be deemed to be capable of taking and holding any office or place of trust, either civil or military, and of taking and holding any grant of lands, tenements and hereditaments, from the Crown, to himself or themselves, or to any other or others in trust for him or them, as well under the great seal of Great Britain, as otherwise, (other than and except offices and places, and grants of lands tenements and hereditaments, within the kingdoms of Great Britain and Ireland) : any law or Act of Parliament to the contrary notwithstanding.

The special provision that the disabling clause was to be inserted in all Naturalization Bills was done away with by 7 & 8 Vict. c. 66, s. 2, it being made a condition of the grant of the certificate of naturalization, by s. 6 : and the disability was finally abolished by the Act of 1870.

14 Geo. III, c. 84 : [1774]—*An Act passed to prevent certain inconveniences that may happen by Bills of Naturalization.*

The preamble recited that—

it hath been found that many persons born out of the allegiance of the Crown of Great Britain obtain bills of naturalization for the purpose of availing themselves in foreign countries of the immunities and indulgences belonging to His Majesty's trading subjects, by treaties, or otherwise : and in order to apply the said immunities and indulgences to promote the trade of the country to which the persons so naturalized originally belonged, and not with any design of fixing their residence in Great Britain, or of becoming useful subjects thereof : and whereas it is neither just nor expedient to permit such abuses of the true intent of naturalization :—

and it provided that no person should thereafter be naturalized unless there was a clause in the bill that he should not become entitled to claim within any foreign country the immunities and indulgences in trade enjoyed by natural-born subjects—

unless such person shall have inhabited and resided within Great Britain, or the dominions thereunto belonging, for the space of 7 years, *subsequent* to the first day of the session of Parliament in which the said bill of naturalization shall have passed, and shall not have been absent out of the same for a longer space than 2 months, at any one time, during the said 7 years.

NOTE on the Repealed Acts, *contd.*

Thirdly :—the inheritance of natural-born subjects to the estate of their ancestors, notwithstanding their father or mother were aliens.

The statute 11 & 12 Will. III, c. 6, which sanctioned this is repealed : but 25 Geo. II, c. 30, passed to remove doubts as to its application, has been preserved : this has already been dealt with. The 16 Geo. III, c. 52, made the same provision in respect of property in Scotland as the 11 & 12 Will. III, c. 6, had made for England.

[*cf.* p. 187.]

Fourthly :— Imperial naturalization in the American Colonies.

13 Geo. II, c. 7 : [1739]. Although this statute was not repealed till 1870, it had ceased to be operative from the time that His Majesty's Colonies in America declared their independence, and that independence was recognised. But it differs in some important particulars from the principles of colonial naturalization as discussed in chapter XV, and for that reason deserves more than a passing reference.

The main difference is that the naturalization in these Colonies was dealt with by Imperial and not Colonial legislation : and the essential difference of principle is that the effect of the naturalization was not limited to the Colonies, but was to be recognised not only in all the American Colonies themselves, but also in Great Britain and Ireland. What therefore the Colonial Legislature could not do, the Imperial Parliament did : and moreover, what it has never done since, it granted larger consequences to the naturalization than it has since been willing to allow the Colonies to grant.

13 Geo. II, c. 7 : [1740], was passed in order to naturalize such foreign protestants, and others therein mentioned, as are settled, or shall settle, in any of His Majesty's Colonies in America.

The preamble is as follows :—

Whereas the increase of people is a means of advancing the wealth and strength of any nation or country : and whereas many foreigners and strangers from the lenity of our government, the purity of our religion, the benefit of our laws, the advantages of our trade, and the security of our property, might be induced to come and settle in some of His Majesty's Colonies in America, if they were made partakers of the advantages and privileges which the natural-born subjects of this realm do enjoy :—

It then provides that—

all persons born out of the ligeance of His Majesty, who have inhabited or resided, or shall inhabit or reside, for the space of 7 years or more, in any of His Majesty's Colonies of America, and shall not have been absent out of some of the said Colonies for a longer space than 2 months

Chapter XVIII

NOTE on the Repealed Acts, *contd.*

at any one time during the said 7 years, and shall take and subscribe the oaths and declarations.....and also make and subscribe the profession of his Christian belief.....shall be deemed adjudged and taken to be His Majesty's natural-born subjects of this kingdom, to all intents and purposes, as if they had been and were born within this kingdom.

The Sacrament was to be taken within 3 months before taking the oaths, " in some protestant and reformed congregation within this kingdom of Great Britain, or within some of the said Colonies in America ".

There was no actual certificate of naturalization, but a certificate of residence "within the said Colonies or some of them", and of the taking the oaths ; this certificate was to be—

deemed and taken to be a sufficient testimony and proof thereof, and of his being a natural-born subject of Great Britain, to all intents and purposes, and as such shall be allowed in every Court within the kingdoms of Great Britain and Ireland, and also in the said Colonies in America.

The proviso of the Act of Settlement was introduced in s. 6.

20 Geo. II, c. 44 : [1747], allowed those who scrupled an oath to make and subscribe the affirmation of fidelity in lieu thereof.

2 Geo. III, c. 25 : [1772], was passed for naturalizing such foreign protestants as have served or shall serve for the space of 2 years, as officers or soldiers in His Majesty's Royal American Regiment, or as Engineers in America. They also were to be " taken to be His Majesty's natural-born subjects of this kingdom to all intents, constructions, and purposes " as if they had been born in this kingdom.

3 Geo. III, c. 25 : [1773], removed the restrictions as to holding places of profit under the Crown and other matters already alluded to in respect of persons who became natural-born subjects by either of the two foregoing Acts.

APPENDIX.

ACT OF SETTLEMENT. 12 & 13 Will. III. cap. 2.

12 & 13 Will. III. c. 2

Provisions for Security of Religion, Laws, and Liberties after Death of His Majesty and Princess Anne, in default of Issue of their Bodies.

III. And whereas it is requisite and necessary that some further Provision be made for securing our Religion, Laws, and Liberties from and after the Death of His Majesty and the Princess *Anne* of *Denmark*, and in default of Issue of the Body of the said Princess and of His Majesty respectively: Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same,

That whosoever shall hereafter come to the Possession of this Crown shall join in Communion with the Church of *England* as by Law established:

That in case the Crown and Imperial Dignity of this Realm shall hereafter come to any Person not being a Native of this Kingdom of *England*, this Nation be not obliged to engage in any War for the Defence of any Dominions or Territories which do not belong to the Crown of *England*, without the Consent of Parliament:

That no Person who shall hereafter come to the Possession of this Crown shall go out of the Dominions of *England*, *Scotland*, or *Ireland*, without Consent of Parliament:

That from and after the Time that the further Limitation by this Act shall take effect all Matters and Things relating to the well governing of this Kingdom which are properly cognizable in the Privy Council by the Laws and Customs of this Realm shall be transacted there, and all Resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same:

That after the said Limitation shall take effect as aforesaid no Person born out of the Kingdoms of *England*, *Scotland*, or *Ireland*, or the Dominions thereunto belonging, (although he be naturalized or made a Denizen, except such as are born of *English* Parents,) shall be capable to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any Office or Place of Trust, either Civil or Military, or to have any Grant of Lands, Tenements, or Hereditaments from the Crown, to himself or to any other or others in trust for him:

That no Person who has an Office or Place of Profit under the King, or receives a Pension from the Crown, shall be capable of serving as a Member of the House of Commons:

That after the said Limitation shall take effect as aforesaid Judges' Commissions be made *quamdiu se bene gesserint*, and their Salaries ascertained and established; but upon the

12 & 13 Will. III. c. 2

Address of both Houses of Parliament it may be lawful to remove them:

That no Pardon under the Great Seal of *England* be pleadable to an Impeachment by the Commons in Parliament.

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1 Geo. I. cap. iv.

1 Geo. I. c. 4

Whereas by an Act of Parliament made in the twelfth year of the Reign of our late Sovereign Lord King William the Third, intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, it is amongst other things enacted, That from and after the time that the further Limitation of the Crown by that Act should take effect no Person born out of the Kingdom of England Scotland or Ireland or the Dominions thereunto belonging although he be naturalized or made a Denizen except such as are born of English Parents should be capable to be of the Privy Council, or a Member of either House of Parliament or to enjoy any Office or Place of Trust either Civil or Military or to have any grant of Lands, Tenements, or Hereditaments from the Crown to himself or to any others in trust for him: And whereas some doubts have arisen concerning the Construction of the said Law Be it declared and enacted by the King's most Excellent Majesty by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by the Authority of the same, That it was not the intent and meaning of the said Act that the said Clause or any Thing therein contained should extend nor shall the said Clause be construed adjudged or taken to extend or disable or incapacitate any Person, who at or before his Majesty's Accession to the Crown was naturalized to be of the Privy Council or a Member of either House of Parliament, or to take or enjoy any Office or Place of Trust either Civil or Military or to take or have any Grant of Lands Tenements or Hereditaments from the Crown to himself or any other in Trust for him.

No person naturalized before his Majesty's accession incapacitated to be a Privy Councillor or a Member of Parliament or to have any Office or Place of Trust, Grant of Lands, &c.

II. And for the better preserving the said recited clause in the said Act of the twelfth year of the late King William the Third entire and inviolable Be it further enacted by the Authority aforesaid That no person shall hereafter be naturalized unless in the Bill exhibited for that purpose there be a Clause or particular Words inserted to declare that such Person shall not thereby be enabled to be of the Privy Council or a Member of either House of Parliament or to take any Office or Place of Trust either Civil or Military or to have any grant of Lands, Tenements, or Hereditaments from the Crown, to himself or any other Person in trust for him, and that no Bill of Naturalization shall hereafter be received in either House of Parliament unless such Clause or Words be first inserted or contained therein.

No person shall hereafter be naturalized unless in the Bill there be such a disabling clause inserted.

Nor shall any Bill be received in either House of Parliament without such clause. See 5 Burr. 2787.

ALIENS ACT, 1844. 7 & 8 Vict. cap. lxvi.

7 & 8 Vict. c. lxvi

Certain Provision of 1 Geo. 1, c. 4 repealed.

2. That so much of the said Act of the First Year of the Reign of King George the First as provides that no Person shall hereafter be naturalized unless in the Bill exhibited for that Purpose there shall be a Clause or particular Words inserted to declare that such Person shall not thereby be enabled to be of the Privy Council or a Member of either House of Parliament or to take any Office either civil or military or to have any Grant of Lands, Tenements or Hereditaments from the Crown to himself or any other Person in trust for him and that no Bill of Naturalization shall hereafter be received in either House of Parliament unless such Clause or Words be first inserted be repealed.

Every Person born of a British Mother capable of holding Real or Personal Estate.

3. That every Person now born or hereafter to be born out of Her Majesty's Dominions, of a Mother being a natural-born Subject of the United Kingdom shall be capable of taking to him his Heirs Executors or Administrators any Estate Real or Personal by Devise or Purchase or Inheritance of Succession.

Alien Friends may hold every Species of Personal Property except Chattels Real.

4. That from and after the passing of this Act every Alien being the subject of a friendly State shall and may take and hold by Purchase Gift Bequest Representation or otherwise every Species of Personal Property except Chattels Real, as fully and effectually to all Intents and Purposes and with the same Rights Remedies Exemptions Privileges and Capacities as if he were a Natural-born Subject of the United Kingdom.

Subjects of a Friendly State may hold Lands, &c., for the purpose of Residence, &c., for 21 years.

5. That every Alien now residing in or who shall hereafter come to reside in any Part of the United Kingdom and being the Subject of a Friendly State may by Grant Lease Demise Assignment Bequest Representation or otherwise take and hold any Lands Houses or other Tenements for the Purpose of Residence or of Occupation by him or her or his or her Servants or for the Purpose of any Business Trade or Manufacture for any Term of Years not exceeding 21 Years as fully and effectually to all Intents and Purposes and with the same Rights Remedies Exemptions and Privileges except the Right to Vote at Elections for Members of Parliament as if he were a Natural-born Subject of the United Kingdom.

Aliens to become naturalized upon obtaining Certificate taking prescribed Oath and becoming Residents in the United Kingdom.

6. That upon obtaining the Certificate and taking the Oath hereinafter prescribed every Alien now residing in or who shall hereafter come to reside in any Part of Great Britain or Ireland with Intent to settle therein shall enjoy all the Rights and Capacities which a natural-born Subject of the United Kingdom can enjoy or transmit except that such Alien shall not be capable of becoming of Her Majesty's Privy Council nor a Member of either House of Parliament nor of enjoying such other Rights and Capacities if any as shall be specially excepted in and by the Certificate to be granted in manner hereinafter mentioned.

7 & 8 Vict. c. lxvi

Aliens desirous of becoming naturalized to present a Memorial.

7. That it shall be lawful for any such Alien as aforesaid to present to one of Her Majesty's Principal Secretaries of State a Memorial stating the Age Profession Trade or other Occupation of the Memorialist and Duration of his Residence in Great Britain or Ireland and all other the Grounds on which he seeks to obtain any of the Rights and Capacities of a natural-born British Subject and praying the said Secretary of State to grant to the Memorialist the Certificate hereinafter mentioned.

Memorial to be considered by the Secretary of State for the Home Department who may issue a Certificate.

8. That every such Memorial shall be considered by the said Secretary of State who shall inquire into the Circumstances of each Case and receive all such Evidence as shall be offered by Affidavit or otherwise as he may deem necessary or proper for proving the Truth of the Allegations contained in such Memorial And that the said Secretary of State if he shall so think fit may issue a Certificate reciting such of the Contents of the Memorial as he shall consider to be true and material and granting to the Memorialist (upon his taking the Oath hereinafter prescribed) all the Rights and Capacities of a natural-born British Subject except the Capacity of being a Member of the Privy Council or a Member of either House of Parliament and except the Rights and Capacities (if any) specially excepted in and by such Certificate.

Certificate to be enrolled in Court of Chancery.

9. That such Certificate shall be enrolled for safe Custody as of Record in Her Majesty's High Court of Chancery and may be inspected and Copies thereof taken under such Regulations as the Lord High Chancellor shall direct.

Oath to be taken.

10. That within sixty days from the day of the Date of such Certificate every Memorialist to whom Rights and Capacities shall be granted by such Certificate shall take and subscribe the following Oath; (that is to say)

"I do sincerely promise and swear
"That I will be faithful and bear true Allegiance to Her
"Majesty Queen Victoria and will defend her to the utmost
"of my Power against all Conspiracies and Attempts what-
"ever which may be made against Her Person Crown or
"Dignity and I will do my utmost Endeavour to disclose
"and make known to Her Majesty Her Heirs and Successors
"all Treasons and traitorous Conspiracies which may be
"formed against Her or them, and I do faithfully promise
"to maintain support and defend to the utmost of my
"Power the Succession of the Crown which Succession by
"an Act intituled An Act for the further Limitation of the
"Crown and better securing the Rights and Liberties of
"the Subject is and stands limited to the Princess Sophia
"Electress of Hanover and the Heirs of her Body being
"Protestants hereby utterly renouncing and abjuring any
"Obedience or Allegiance unto any other Person claiming
"or Pretending a Right to the Crown of this Realm.
"So help me God."

Which Oath shall be taken and subscribed by such Memorialist and shall be duly Administered to him or her before any of Her Majesty's Judges of the Court of Queen's Bench or Court of Common Pleas or Court of Exchequer or before any Master or Master Extraordinary in Chancery and that the Judge or Master or Master Extraordinary in Chancery whether in England or in Ireland before whom such Oath may be administered shall grant to the Memorialist a Certificate of his or her having taken and subscribed such Oath accordingly; and such Certificate shall be signed by the Judge, Master or Master Extraordinary in Chancery before whom such Oath shall be administered. 7 & 8 Vict. c. lxvi

11. That the several Proceedings hereby authorized to be taken for obtaining such Certificate as aforesaid shall be regulated in such Manner as the Secretary of State shall from Time to Time direct. Proceedings for obtaining Certificate.

12. That the Fees payable in respect of the several Proceedings hereby authorized shall be fixed and regulated by the Commissioners of Her Majesty's Treasury. Amount of fees to be payable.

13. That all persons who shall have been naturalized before the passing of this Act and who shall have resided in the United Kingdom during Five successive Years shall be deemed entitled to and shall enjoy all such Rights and Capacities of British Subjects as may be conferred on Aliens by the Provisions of this Act. Naturalized Persons resident Five years to enjoy Rights as Aliens.

14. Provided always that nothing in this Act shall prejudice or be construed to prejudice any Rights or Interests in Law or in Equity whether vested or contingent under any Will Deed or Settlement executed by any Natural-born Subject of Great Britain or Ireland before the passing of this Act or under any Descent or Representation from or under any such natural-born Subject who shall have died before the passing of this Act. Act not to affect pre-existing Rights.

15. That nothing herein contained shall be construed so as to take away or diminish any Right Privilege or Capacity heretofore lawfully possessed by or belonging to Aliens residing in Great Britain or Ireland so far as relates to the Possession or Enjoyment of any Real or Personal Property but that all such Rights shall continue to be enjoyed by such Aliens in as full and ample a Manner as such rights were enjoyed before the passing of this Act. Act not to take away Rights of Aliens.

16. That any Woman married or who shall be married to a natural-born Subject or Person Naturalized shall be deemed and taken to be herself naturalized, and have all the Rights and Privileges of a natural-born Subject. Women married to naturalized Subjects deemed naturalized.

17. That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament. Act may be amended.

ALIENS ACT, 1847. 10 & 11 Vict. cap. 83.

[22*nd July*, 1847.]

10 & 11 Vict. c. 83

Whereas by divers Acts, Statutes, or Ordinances enacted by the Legislatures of divers of Her Majesty's Colonies or Possessions abroad Provision hath been made for imparting to divers Aliens there resident the Privileges or some of the Privileges of Naturalization, to be exercised and enjoyed within the respective Limits of such Colonies and Possessions respectively: And whereas Doubts have arisen as to the Competency of the said Legislatures to enact any such Laws, Statutes, or Ordinances, and as to the Validity of the same when so enacted, and it is expedient that such Doubts be removed: Be it

All Acts, &c. of Colonial Legislatures imparting Privileges of Naturalization valid.

therefore and it is hereby declared and enacted, etc., That all Acts, Statutes, and Ordinances heretofore made and enacted by the Legislatures of any of Her Majesty's Colonies and Possessions abroad for imparting to any Person or Persons the Privileges or any of the Privileges of Naturalization, to be by such Person or Persons exercised and enjoyed within the respective Limits of such Colonies or Possessions respectively, shall within such Limits have and be taken and reputed to have had from the Time of the Enactment thereof respectively all such and the same Force and Effect as doth by Law belong to any other Law, Statute, or Ordinance made or enacted by any such respective Legislatures.

All Laws, &c. hereafter made imparting Privileges of Naturalization valid, but subject to Confirmation or Disallowance by Her Majesty.

II. And be it and it is hereby enacted and declared, That all Laws, Statutes, and Ordinances which shall hereafter be made and enacted by the Legislatures of any of Her Majesty's Colonies or Possessions abroad for imparting to any Person or Persons the Privileges or any of the Privileges of Naturalization, to be by any such Person or Persons exercised and enjoyed within the Limits of any such Colonies and Possessions respectively, shall within such Limits have the Force and Authority of Law, any Law, Statute, or Usage to the contrary in anywise notwithstanding: Provided nevertheless, that all such Laws, Statutes, and Ordinances shall be made and enacted in such Manner and Form, and subject to and in conformity with all such Rules as now are or hereafter shall be in force in respect of other Laws, Statutes, or Ordinances enacted or to be enacted by any such Legislatures respectively, and shall and may be confirmed or disallowed by Her Majesty in such and the same Manner, and subject to the same Rules and Regulations as extend or as shall hereafter extend to the Confirmation or Disallowance of any other such Laws, Statutes, or Ordinances.

7 & 8 Vict. c. 66, not to extend to Colonies or Possessions abroad.

III. And whereas a certain Act was made and enacted in the Seventh and Eighth Year of the Reign of Her present Majesty, intituled *An Act to amend the Laws relating to Aliens:* And whereas Doubts have arisen whether the said recited Act of the Seventh and Eighth Year of Her Majesty's Reign extends to and is in force in Her Majesty's Colonies or Possessions abroad: Now it is hereby further enacted and declared, That the said recited Act of the Seventh

and Eighth Year of Her Majesty's Reign, or any Part of it, doth not extend to the said Colonies or Possessions, or to any of them. 10 & 11 Vict. c. 83

IV. And be it enacted, That this Act may be amended or repealed by any other Act of this present Session of Parliament. Act may be amended, &c.

THE NATURALIZATION ACT, 1870. 33 Vict. cap. 14.

33 Vict. c. 14

1. This Act may be cited for all purposes as "The Naturalization Act, 1870." Short title.

Status of Aliens in the United Kingdom.

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: Provided,— Capacity of an alien as to property.

(1) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise:

(2) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him:

(3) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by Order in Council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such Order in Council, any person being originally a subject or citizen of the state referred to in such Order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid. Power of naturalized aliens to divest themselves of their status in certain cases.

A declaration of alienage may be made as follows; that is to say,—

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If the declarant be in the United Kingdom in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

How British-born subject may cease to be such.

4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

Alien not entitled to jury de medietate linguæ.

5. From and after the passing of this Act, an alien shall not be entitled to be tried by a jury de medietate linguæ, but shall be triable in the same manner as if he were a natural-born subject.

Expatriation.

Capacity of British subject to renounce allegiance to Her Majesty.

6. Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien: Provided,—

(1.) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration herein-after referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect:

(2) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say,— if the declarant be in the United Kingdom in the presence

of a justice of the peace; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty. 33 Viet. c. 14

Naturalization and resumption of British Nationality.

Certificate of naturalization.

7. An alien who within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien

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upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

Certificate of re-admission to British nationality.

8. A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate, herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

Form of oath of allegiance.

9. The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

"I do swear that I will be faithful and "bear true allegiance to Her Majesty Queen Victoria, Her "heirs and successors, according to law. So help me GOD."

National status of married women and infant children.

National status of married women and infant children.

10. The following enactments shall be made with respect to the national status of women and children:

(1.) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject:

(2.) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this Act:

(3.) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father

or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject, of the state of which the father or mother has become a subject and not a British subject:

(4.) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents:

(5.) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

Supplemental Provisions.

Regulations as to registration.

11. One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters: —

(1.) The form and registration of declarations of British nationality:

(2.) The form and registration of certificates of naturalization in the United Kingdom:

(3.) The form and registration of certificates of re-admission to British nationality:

(4.) The form and registration of declarations of alienage:

(5.) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations:

(6.) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence, of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act:

(7) With the consent of the Treasury the imposition and application of fees in respect of any registration authorised to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act.

The said Secretary of State, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this Section.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by

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this Act, and shall be of the same force as if it had been enacted in this Act, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

Regulations as to evidence.

12. The following regulations shall be made with respect to evidence under this Act:—

(1) Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned:

(2) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:

(3) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:

(4) Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this or by any regulation of the said Secretary of State authorized to be inserted in the register:

(5) The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

Miscellaneous.

Saving of letters of denization.

13. Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty.

Saving as to British ships.

14. Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

15. Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

Saving of allegiance prior to expatriation.

16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

Power of colonies to legislate with respect to naturalization.

17. In this Act, if not inconsistent with the context or subject-matter thereof,—

Definition of terms.

"Disability" shall mean the status of being an infant, lunatic, idiot, or married woman:

"British possession" shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this Act:

"The Governor of any British possession" shall include any person exercising the chief authority in such possession:

"Officer in the Diplomatic Service of Her Majesty" shall mean any Ambassador, Minister or Chargé d'Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d'Affaires, or Secretary of Legation to execute any duties imposed by this Act on an officer in the Diplomatic Service of Her Majesty:

"Officer in the Consular Service of Her Majesty" shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

Repeal of Acts mentioned in Schedule.

18. The several Acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the Acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; provided that the repeal enacted in this Act shall not affect—

Repeal of Acts.

(1.) Any right acquired or thing done before the passing of this Act:

(2.) Any liability accruing before the passing of this Act:

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the passing of this Act:

33 Vict. c. 14

(4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

NOTE.—Reference is made to the repeal of the "whole Act" where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous Acts.

This Schedule, so far as respects Acts prior to the reign of George the Second, other than Acts of the Irish Parliament, refers to the edition prepared under the direction of the Record Commission, intituled "The Statutes of the Realm; printed by command of "His Majesty King George the Third, in pursuance of an Address of the House of "Commons of Great Britain. From original Records and authentic Manuscripts."

PART I.

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT.

Date.	Title.
7 Jas. 1. c. 2 . . .	An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy.
11 Will. 3. c. 6 (*a*) . .	An Act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.
13 Geo. 2. c. 7 . . .	An Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America.
20 Geo. 2. c. 44 . . .	An Act to extend the provisions of an Act made in the thirteenth year of His present Majesty's reign, intituled "An Act for naturalizing foreign "Protestants and others therein mentioned, as "are settled or shall settle in any of His Majesty's "colonies in America, to other foreign Protes- "tants who conscientiously scruple the taking of "an oath."
13 Geo. 3. c. 25 . . .	An Act to explain two Acts of Parliament, one of the thirteenth year of the reign of His late Majesty, "for naturalizing such foreign Protes- "tants and others, as are settled or shall settle in "any of His Majesty's colonies in America," and the other of the second year of the reign of His present Majesty, "for naturalizing such foreign "Protestants as have served or shall serve as "officers or soldiers in His Majesty's Royal "American regiment, or as engineers in "America."

(*a*) 11 & 12 Wm. 3 (Ruff).

Date.	Title.
14 Geo. 3. c. 84 . . .	An Act to prevent certain inconveniences that may happen by bills of naturalization.
16 Geo. 3. c. 52 . . .	An Act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.
6 Geo. 4. c. 67 . . .	An Act to alter and amend an Act passed in the seventh year of the reign of His Majesty King James the First, intituled "An Act that all such "as are to be naturalized or restored in blood "shall first receive the sacrament of the Lord's "Supper and the oath of allegiance and the oath "of supremacy."
7 & 8 Vict. c. 66 . .	An Act to amend the laws relating to aliens.
10 & 11 Vict. c. 83 . .	An Act for the naturalization of aliens.

PART II.

Acts of the Irish Parliament wholly repealed.

Date.	Title.
14 & 15 Chas. 2. c. 13 .	An Act for encouraging Protestant strangers and other to inhabit and plant in the kingdom of Ireland.
2 Anne c. 14. . . .	An Act for naturalizing of all Protestant strangers in this kingdom.
19 & 20 Geo. 3. c. 29 .	An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.
23 & 24 Geo. 3. c. 38 .	An Act for extending the provisions of an Act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An Act for naturalizing such foreign merchants, "traders, artificers, artizans, manufacturers, work-"men, seamen, farmers, and others as shall settle "in this kingdom."
36 Geo. 3. c. 48 . . .	An Act to explain and amend an Act, intituled "An Act for naturalizing such foreign merchants, "traders, artificers, artizans, manufacturers, work-"men, seamen, farmers, and others who shall "settle in this kingdom."

PART III.

ACTS PARTIALLY REPEALED.

33 Vict. c. 14			Extent of Repeal.
	4 Geo. 1. c. 9. (Act of Irish Parliament.)	An Act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary.	So far as it makes perpetual the Act of 2 Anne, c. 14.
	6 Geo. 4. c. 50 .	An Act for consolidating and amending the laws relative to Jurors and Juries.	The whole of sect. 47.
	3 & 4 Will. 4. c. 91	An Act consolidating and amending the laws relating to Jurors and Juries in Ireland.	The whole of sect. 37.

THE NATURALIZATION OATH ACT, 1870.
33 & 34 Vict. cap. 102.

33 & 34 Vict. c. 102

Regulations as to oaths of allegiance.

1. The power of making regulations vested in one of Her Majesty's Principal Secretaries of State by the Naturalization Act, 1870, shall extend to prescribing as follows:

(1.) The persons by whom the oaths of allegiance may be administered under that Act:

(2.) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested:

(3.) The registration of such oaths:

(4.) The persons by whom certified copies of such oaths may be given:

(5.) The transmission to the United Kingdom for the purpose of registration or safe keeping or of being produced as evidence of any oaths taken in pursuance of the said Act out of the United Kingdom, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of the United Kingdom in pursuance of this Act:

(6.) The proof in any legal proceeding of such oaths:

(7.) With the consent of the Treasury, the imposition and application of fees in respect of the administration or registration of any such oath.

The two last paragraphs in the eleventh section of the Naturalization Act, 1870, shall apply to regulations made under this Act.

Penalty on making false declaration.

2. Any person wilfully and corruptly making or subscribing any declaration under the Naturalization Act, 1870, knowing the same

to be untrue in any material particular, shall be guilty of a misdemeanor, and be liable to imprisonment with or without hard labour for any term not exceeding twelve months. 33 & 34 Vict. c. 102

3. This Act shall be termed the Naturalization Oath Act, 1870, and shall be construed as one with the Naturalization Act, 1870, and may be cited together with that Act as the Naturalization Acts, 1870. Construction and short title of Act.

NATURALIZATION ACT, 1872. 35 & 36 Vict. cap. 39.

35 & 36 Vict. c. 39

Whereas by a Convention between Her Majesty and the United States of America, supplementary to the Convention of the thirteenth day of May one thousand eight hundred and seventy, respecting naturalization, and signed at Washington on the twenty-third day of February one thousand eight hundred and seventy-one, and a copy of which is contained in the schedule to this Act, provision is made in relation to the renunciation by the citizens and subjects therein mentioned of naturalization or nationality in the presence of the officers therein mentioned:

And whereas doubts are entertained whether such provisions are altogether in accordance with the Naturalization Act, 1870: And whereas other doubts have arisen with respect to the effect of "The Naturalization Act, 1870," on the rights of women married before the passing of that Act; and it is expedient to remove such doubts:

Be it enacted etc.

1. This Act may be cited for all purposes as the Naturalization Act, 1872, and this Act and "The Naturalization Act, 1870," may be cited together as "The Naturalization Acts, 1870 and 1872." Short title.

2. Any renunciation of naturalization or of nationality made in manner provided by the said supplementary Convention by the persons and under the circumstances in the said Convention in that behalf mentioned shall be valid to all intents, and shall be deemed to be authorised by the said Naturalization Act, 1870. This section shall be deemed to take effect from the date at which the said supplementary Convention took effect. Confirmation of renunciation of nationality under the Convention.

3. Nothing contained in "The Naturalization Act, 1870," shall deprive any married woman of any estate or interest in real or personal property to which she may have become entitled previously to the passing of that Act, or affect such estate or interest to her prejudice. Saving clause as to property of married women.

SCHEDULE.

35 & 36 Vict. c. 39

CONVENTION between Her Majesty and the United States of America, supplementary to the Convention of May 13, 1870 respecting Naturalization.

Signed at Washington, 23rd February 1871.

[*Ratifications exchanged at Washington, May* 4, 1871.]

WHEREAS by the second article of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America for regulating the citizenship of subjects and citizens of the contracting parties who have emigrated or may emigrate from the dominions of the one to those of the other party, signed at London, on the 13th of May 1870, it was stipulated that the manner in which the renunciation by such subjects and citizens of their naturalization, and the resumption of their native allegiance, may be made and publicly declared, should be agreed upon by the governments of the respective countries; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the President of the United States of America, for the purpose of effecting such agreement, have resolved to conclude a supplemental Convention, and have named as their plenipotentiaries, that is to say; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, and Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and the President of the United States of America, Hamilton Fish, Secretary of State; who have agreed as follows:—

ARTICLE I.

Any person being originally a citizen of the United States who had, previously to May 13, 1870, been naturalized as a British subject, may at any time before August 10, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may at any time before May 12, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing, substantially in the form hereunto appended, and designated as Annex A.

Such renunciation by an original citizen of the United States, of British nationality, shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any court authorized by law for the time being to admit aliens to naturalization, or before the clerk or prothonotary of any such court: if the declarant be beyond the territories of the United States, it shall be made in duplicate, before any diplomatic or consular officer of the United States. One of such duplicates shall remain of record in the custody of the court or officer in whose presence it was made; the other shall be, without delay, transmitted to the department of State.

Such renunciation, if declared by an original British subject of his acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of Great Britain and Ireland, be made in duplicate, in the presence of a justice of the peace; if elsewhere in Her Britannic Majesty's dominions, in triplicate, in the presence of any judge of civil or

criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the diplomatic or consular service of Her Majesty.

Article II.

The contracting parties hereby engage to communicate each to the other, from time to time, lists of the persons who, within their respective dominions and territories, or before their diplomatic and consular officers, have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

Article III.

The present Convention shall be ratified by Her Britannic Majesty, and by the President of the United States by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at Washington as soon as may be convenient.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Washington, the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-one.

(L.S.) Edwd. Thornton.
(L.S.) Hamilton Fish.

Annex A.

I, *A.B.*, of (*insert abode*), being originally a citizen of the United States of America (*or a British subject*), and having become naturalized within the dominions of Her Britannic Majesty as a British subject (*or as a citizen within the United States of America*), do hereby renounce my naturalization as a British subject (*or citizen of the United States*); and declare that it is my desire to resume my nationality as a citizen of the United States (*or British subject*).

(Signed) *A.B.*

Made and subscribed before me in (*insert country or other subdivision, and state, province, colony, legation, or consulate*), this day of 187 .

(Signed) *E.F.*,
Justice of the Peace (*or other title*).

(L.S.) Edwd. Thornton.
(L.S.) Hamilton Fish.

NATURALIZATION ACT, 1895. 58 & 59 Vict. cap. 43.

58 & 59 Vict. c. 43

Amendment of 33 & 34 Vict. c. 14, s. 10, as respects children of naturalized British subjects resident abroad.

1.—(1.) The residence of a child of a naturalized British subject with his father while in the service of the Crown out of the United Kingdom, shall have, and be deemed always to have had, the same effect, for the purpose of subsection five of section ten of the Naturalization Act, 1870, as residence with such father in the United Kingdom.

(2) Subsection five of section ten of the Naturalization Act, 1870, shall have effect as if the words "or with such father while in the service of the Crown out of the United Kingdom" had been inserted therein after the words "part of the United Kingdom," and every copy of the Naturalization Act, 1870, hereafter printed may be printed accordingly.

Short title.

2. This Act may be cited as the Naturalization Act, 1895.

NATURALIZATION ACTS, 1870.

REGULATIONS.

Regulations

In exercise of the Powers contained in the Naturalization Acts, 1870, I, the Right Honourable HENRY AUSTIN BRUCE, one of Her Majesty's Principal Secretaries of State, make the following Regulations.

FORMS.

I.—The form of declarations made in pursuance of the said Acts shall be respectively as follows:—

NATURALIZATION ACTS, 1870.

Declaration of Alienage by a Naturalized British Subject.

Insert address.

I, *A.B.*, of , having been naturalized as a British subject on the of , 18 , do hereby, under the provisions of the Order of Her Britannic Majesty in Council of the , and of the treaty between Great Britain and *C.D.*, renounce my naturalization as a British subject, and declare that it is my desire to resume my nationality as a subject [*or* citizen] of *C.D.*

(Signed) *A.B.*

Made and subscribed this day of 18 , before me,

(Signed) *E.F.*,

Justice of the Peace

[*or other official title*].

NATURALIZATION ACTS, 1870.

Declaration of Alienage by a Person born within British Dominions. **Regulations**

I, *A.B.*, of , being held by the common law of Great Britain to be a natural-born subject of Her Britannic Majesty by reason of my having been born within Her Majesty's dominions, and being also held by the law of *C.D.* to have been at my birth, and to be still, a subject [*or* citizen] of *C.D.*, hereby renounce my nationality as a British subject, and declare that it is my desire to be considered and treated as a subject [*or* citizen] of *C.D.* Insert address.

(Signed) *A.B.*

Made and subscribed this day of 18 , before me,

(Signed) *E.F.*,
Justice of the Peace
[*or other official title*].

NATURALIZATION ACTS, 1870.

Declaration of Alienage by a Person who is by origin a British subject.

I, *A.B.*, of , having been born out of Her Britannic Majesty's dominions of a father being a British subject, do hereby renounce my nationality as a British subject. Insert address.

(Signed) *A.B.*

Made and subscribed this day of 18 , before me,

(Signed) *G.H.*,
Justice of the Peace
[*or other official title*].

NATURALIZATION ACTS, 1870.

Declaration of British Nationality.

I, *A.B.*, of , being a natural-born subject of Her Britannic Majesty, and having voluntarily become naturalized as a subject [*or* citizen] of *C.D.*, on the desire to be considered and treated as a British subject. Insert address.

(Signed) *A.B.*

Made and subscribed this day of 18 , before me,

(Signed) *E.F.*,
Justice of the Peace
[*or other official title*].

Note.—The Act of Parliament under which this declaration is made provides that the declarant "shall not, when within the limits of the foreign "State in which he has been naturalized, be deemed to be a British subject, "unless he has ceased to be a subject of that State in pursuance of the laws "thereof, or in pursuance of a treaty to that effect."

II.—The forms of Certificates granted in pursuance of the said Acts shall be respectively as follows:—

NATURALIZATION ACTS, 1870.

Certificate of Naturalization to an Alien.

Secretary of State's Office, Whitehall.

Whereas *A.B.*, an alien, now residing at , has presented to me, the Right Honourable *E.F.*, one of Her Majesty's Principal Secretaries of

Regulations State, a memorial, praying for a certificate of naturalization, and alleging that he is [*particulars according to the "Instructions"*], and that in the period of eight years preceding his application he has resided for five years within the United Kingdom [*or* has been for five years in the service of the Crown as], and intends, when naturalized, to reside in the United Kingdom [*or* to serve under the Crown]; and whereas I have inquired into the circumstances of the case, and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial,* now, in pursuance of the authority given to me by the said Acts, I grant to the aforesaid *A.B.* this certificate, and declare that he is hereby naturalized as a British subject, and that, upon taking the oath of allegiance, he shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom; with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject, be deemed to be a British subject, unless he has ceased to be a subject [*or* citizen] of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

In witness whereof I have hereto subscribed my name this day of 18 .

(Signed) *E.F.*

NATURALIZATION ACTS, 1870.

Certificate of Naturalization under the Acts of 1870 *to an Alien naturalized under the Act of* 1844.

Secretary of State's Office, Whitehall.

Whereas *A.B.*, an alien, now residing at , has presented to me, the Right Honourable *E.F.*, one of Her Majesty's Principal Secretaries of State, a memorial, praying for a certificate of naturalization under the Naturalization Acts, 1870, and alleging that he was naturalized in the United Kingdom in pursuance of the Act 7 & 8 Vict. c. 66, on the day of 18 , that he was originally a subject of and that in the period of eight years preceding his application he has resided for five years within the United Kingdom [*or* has been for five years in the service of the Crown as], and intends, if he receives the certificate of naturalization for which he prays, to reside in the United Kingdom [*or* to serve under the Crown]; and whereas I have inquired into the circumstances of the case, and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial;* now, in pursuance of the authority given to me by the Naturalization Acts, 1870, I grant to the aforesaid *A.B.* this certificate, and declare that he is hereby naturalized as a British subject, and that, upon taking the oath of allegiance, he shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom; with this qualification, that he shall not, when within the limits of the foreign State of which he was a natural-born subject [*or* citizen], be deemed to be a British subject, unless he has ceased to be a subject [*or* citizen] of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

In witness whereof I have hereto subscribed my name this day of 18 .

(Signed) *E.F.*

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* See Amending Regulation, *infra*.

NATURALIZATION ACTS, 1870.

Special Certificate of Naturalization to a Person with respect to whose Nationality a doubt exists.

Secretary of State's Office, Whitehall. **Regulations**

Whereas *A.B.*, of , has presented to me, the Right Honourable *C.D.*, one of Her Majesty's Principal Secretaries of State, a memorial praying for a special certificate of naturalization under the above-mentioned Acts, and alleging that he is a person with respect to whose nationality as a British subject a doubt exists, that he is , and that in the period of eight years preceding his application he has resided for five years within the United Kingdom [*or* has been for five years in the service of the Crown as], and intends, if he receives the certificate of naturalization for which he prays, to reside in the United Kingdom [*or* to serve under the Crown]; and whereas I have inquired into the circumstances of the case, and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial;* now, in pursuance of the authority given to me by the said Act, and for the purpose of quieting doubts as to the right of the said *A.B.* to be a British subject, I grant to the aforesaid *A.B.* this certificate, and declare that he is hereby naturalized as a British subject, and that, upon taking the oath of allegiance, he shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom; with this qualification, that if it should be proved that the said *A.B.* was heretofore a subject [*or* citizen] of any other State, he shall not, when within the limits of such State, be deemed to be a British subject, unless he has ceased to be a subject [*or* citizen] of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect. And I further declare that the grant of this special certificate of naturalization shall not be deemed to be any admission that the aforesaid *A.B.* was not heretofore a British subject.

In witness whereof I have hereto subscribed my name this day of 18 .

(Signed) *C.D.*

NATURALIZATION ACTS, 1870.

Certificate of Re-admission to British Nationality.

(*To be granted by one of Her Majesty's Principal Secretaries of State.*)

Whereas *A.B.* has presented to me, the Right Honourable *E.F.*, one of Her Majesty's principal Secretaries of State, a memorial, praying for a certificate of re-admission to British nationality, and alleging that he was a natural-born British subject, and that he became an alien by being naturalized as a subject [*or* citizen] of *G.H.*,† on the day of 18 , that he is , and that in the period of eight years preceding his application he has resided for five years within the United Kingdom [*or* has been for five years in the service of the Crown as], and intends, if he receives the certificate of re-admission to British nationality for which he

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* See Amending Regulation, *infra*.

† Where the Applicant is a widow, the form must be modified accordingly, and recite the allegation in the memorial that the applicant became an alien by marriage with her late husband *L.M.*, a subject [*or* citizen] of *G.H.*

Regulations prays, to reside in the United Kingdom [*or* to serve under the Crown]; and whereas I have inquired into the circumstances of the case, and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial;* and whereas the said *A.B.* has taken the oath of allegiance; now, in pursuance of the authority given to me by the said Acts, I grant to the aforesaid *A.B.* this certificate, and declare that, as from the date of this certificate, but not in respect of any previous transaction, he is hereby re-admitted to the status of a British subject; with this qualification that, within the limits of the foreign State of which he became a subject, he shall not be deemed to be a British subject, unless he has ceased to be a subject [*or* citizen] of that State according to the laws thereof, or in pursuance of a treaty to that effect.

In witness whereof I have hereto subscribed my name this day of 18 .

(Signed) *E.F.*

OATH OF ALLEGIANCE.

III.—The Oath of Allegiance shall be subscribed as well as taken.

IV.—The following persons may administer the oath of allegiance:—

In England or Ireland—

Any Justice of the Peace or any Commissioner authorised to administer oaths in Chancery.

In Scotland—

Any Sheriff, Sheriff-substitute, or Justice of the Peace.

Elsewhere in Her Majesty's dominions—

Any Judge of any Court of Civil or Criminal jurisdiction:

Any Justice of the Peace:

Any Officer for the time being authorised by law in the place in which the deponent is to administer an oath for any judicial or other legal purpose.

This regulation shall not apply to the case of the administration of an oath of allegiance in respect of a Declaration of British nationality, for which case provision is made by the Naturalization Act, 1870 (33 Vict. c. 14. s. 6).

V.—The form in which the Oath of Allegiance shall be subscribed shall be as follows:—

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God.

(Signed) *A.B.*

Sworn and subscribed this day of before me,

(Signed) *C.D.*

Justice of the Peace

[*or other official title*].

VI.—The Oath of Allegiance taken and subscribed in pursuance of the said Acts may be proved in any legal proceeding by the

* See amending Regulation, *infra*.

production of the original Certificate, or any copy thereof certified to be a true copy by one of Her Majesty's Principal or Under Secretaries of State. Regulations

This regulation shall apply exclusively to legal proceedings in the United Kingdom.

REGISTRATION.

VII.—Every Declaration, whether of alienage or British nationality, and every Certificate, whether of naturalization or of re-admission to British nationality, and every Oath of Allegiance taken with respect to a Declaration or Certificate, shall be registered in the office of one of Her Majesty's Principal Secretaries of State.

Copies, certified by one of Her Majesty's Principal or Under Secretaries of State to be true copies of any Declaration, Certificate, or Oath which has been Registered, may be obtained at such office as aforesaid.

This regulation shall apply exclusively to such Declarations, Certificates, and Oaths as may be made, granted, and taken respectively in the United Kingdom.

FEES.

VIII.—With the consent of the Lords Commissioners of Her Majesty's Treasury, I prescribe that fees may be taken and applied as follows:—

The matter in which the Fee may be taken.	The Amount of Fee.	To whom Payment of Fee to be applied.
	£ s. d.	
For taking a declaration, whether of alienage or British nationality.	0 2 6	To the clerk of justice taking declaration, or in Scotland to the clerk of the peace or any of his deputies.
*For granting a certificate, whether of naturalization or re-admission to British nationality, and for registering the same, together with the oath of allegiance.	1 0 0	Into the receipt of Her Majesty's Exchequer in such manner as the Treasury from time to time shall direct, and to be carried to the Consolidated Fund.
For administration of the oath of allegiance.	0 2 6	In England or Ireland, if the oath is administered by a justice of the peace, to the clerk of such justice, otherwise to the officer administering the oath. In Scotland, if the oath is administered by a sheriff or sheriff-substitute, to the sheriff clerk; if by a justice of the peace, to the clerk of the peace or any of his deputies.

* See Amending Regulation, *infra*.

Regulations

The matter in which the Fee may be taken.	The Amount of Fee.	To whom Payment of Fee to be applied.
	£ s. d.	
For transmitting a declaration, with or without oath, for registration.	0 0 6	To the clerk of the justice, who transmits the same, or in Scotland to the clerk of the peace or any of his deputies.
For registration of declaration, with or without oath of allegiance.	0 10 0	Into the receipt of Her Majesty's Exchequer in manner aforesaid.
For certified copy of any declaration or certificate, with or without oath.	0 10 0	The same.

This regulation shall apply exclusively to Declarations, Certificates, and Oaths made, granted, and taken respectively in the United Kingdom.

H. A. BRUCE.

1st February 1872.

SUPPLEMENTAL REGULATIONS as to FEE TO BE TAKEN for the GRANT of a CERTIFICATE, whether of NATURALIZATION or RE-ADMISSION TO BRITISH NATIONALITY, and for REGISTERING THE SAME, together with the OATH OF ALLEGIANCE.

With the consent of the Lords Commissioners of Her Majesty's Treasury, I prescribe that a Fee of 5*l.* shall be taken for the grant of a Certificate, whether of naturalization or of re-admission to British nationality, and for registering the same, together with the Oath of Allegiance, and such fee shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Lords Commissioners of Her Majesty's Treasury shall from time to time direct, and be carried to the Consolidated Fund.

This regulation shall apply exclusively to Certificates granted in the United Kingdom for which application was made after the 24th of June 1880, and shall be in lieu of so much of the Regulation of 1st of February 1872 as prescribes a fee in respect of the same matters.

W. V. HARCOURT.

HOME OFFICE, 24 *June* 1880.

SUPPLEMENTAL REGULATION amending FORM OF CERTIFICATES of NATURALIZATION of an ALIEN.

I hereby prescribe that in the recitals of the various Certificates issued under the Naturalization Act, 1870, namely, the Certificates A, AA, AAA, B, C, and D, the form of which was prescribed by the Regulations issued on the 1st of February 1872, the paragraph which

relates to the verification of the allegations in the memorial shall run as follows:— Regulations

"And whereas I have inquired into the circumstances of the case, "and have received such evidence as I have deemed necessary for "proving the truth of the allegations contained in such memorial so "far as the same relate to the memorialist."

HUGH C. E. CHILDERS.

WHITEHALL, 3 *March* 1886.

SUPPLEMENTAL REGULATION as to FEE to be taken for the GRANT of a CERTIFICATE, whether of NATURALIZATION or of RE-ADMISSION to BRITISH NATIONALITY, and for REGISTERING THE SAME, together with the OATH OF ALLEGIANCE.

With the consent of the Lords Commissioners of Her Majesty's Treasury, I prescribe that the Fee to be taken for the grant of a Certificate, whether of naturalization or of re-admission to British nationality, and for registering the same, together with the Oath of Allegiance, shall be reduced to 1*l.*

This regulation shall apply exclusively to Certificates granted in the United Kingdom for which application was made after the 15th of May 1886, and shall be in lieu of so much of the Regulation of 24th June 1880 as prescribes the amount of the fee in respect of the same matters.

H. C. E. CHILDERS.

HOME OFFICE, 15 *May* 1886.

SUPPLEMENTAL REGULATION as to FEE to be taken for the GRANT of a CERTIFICATE, whether of NATURALIZATION or of RE-ADMISSION to BRITISH NATIONALITY, and for REGISTERING THE SAME, together with the OATH OF ALLEGIANCE.

With the consent of the Lords Commissioners of Her Majesty's Treasury, I prescribe that the Fee to be taken for the grant of a Certificate, whether of naturalization or of re-admission to British nationality, and for registering the same, together with the Oath of Allegiance, shall be raised to five pounds (5*l.*).

This regulation shall apply exclusively to Certificates granted in the United Kingdom for which application is made on or after the first day of January 1887, and shall be in lieu of the Regulation of the fifteenth day of May last prescribing the amount of the fee in respect of the same matters.

HENRY MATTHEWS,
One of Her Majesty's Principal Secretaries of State.

WHITEHALL, 28 *December* 1886.

(A.)
THE NATURALIZATION ACT, 1870.

Instructions as to Applications for Certificates of Naturalization.

Instructions

1. An application for a Certificate of Naturalization must be by way of a Memorial addressed to one of His Majesty's Principal Secretaries of State.

2. The applicant's Memorial must show :—

(i.) The Foreign State * of which he is a subject, his place † of birth, and the names and nationality of his parents.

(ii.) His name,§ address in full, age, and occupation.

(iii.) Whether he is married, and, if so, the names and ages of any children under age residing with him.

(iv.) The facts—in detail both as to time and place—of his residence during the period of at least five years immediately preceding the application. If continuous residence for the statutory term of five years within the United Kingdom cannot be shown, details as to such longer period, not exceeding eight years, as may be necessary, should be shown.

The details may be shown as follows :—

			Years.	Months.
From	to	at		
From	to	at		
From	to	at		
			———	———
			———	———

(v.) His intention to reside in the United Kingdom.

3. The statements in the Memorial must be supported by a declaration made by the applicant before a magistrate or other person authorised to receive such declaration, in pursuance of the Act 5 & 6 Wm. IV., c. 62.

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* "Foreign State."—Care should be taken to describe the State accurately, *e.g.*, a Russian Pole should be described as a subject of the Russian Empire; a German Pole, or a Bavarian, or a Prussian, should be described as a subject of the German Empire. If an applicant has lost the nationality he acquired at birth, or acquired any other nationality, his original nationality should nevertheless be specified, with a statement of the circumstances in which it was lost or the new one acquired.

† "Place of Birth."—The place of birth should be stated, so far as practicable, in the form of a postal address, showing the province or other division of the country as well as the town or village in which the applicant was born.

§ If the applicant is known by a name other than his real name, both should be stated thus :—"A. B., commonly known as C. D."

4. The statements in the Memorial with respect to the several periods of residence in the United Kingdom which make up the full statutory term of five years must be verified *specifically, as to both time and place*, by a like declaration of some person who is able to testify thereto. The declarant must be— Instructions

(*a*) a Natural-born British subject;

(*b*) not the Agent or the Solicitor of the Memorialist; and

(*c*) able to testify to the facts of residence from personal knowledge and not from information only.

These particulars and also the declarant's place of residence and occupation must be set out in the declaration.

The manner in which the knowledge was acquired must be stated in detail. Statements that such knowledge was acquired through "business transactions" will not be sufficient unless it is clearly shown that the business transactions were of such a nature or carried on under such circumstances as to give the declarant the knowledge to which he testifies.

Should there be no one such person who has personal knowledge of the residence during the full statutory term, the declarations of two or more persons may be submitted, made either by each separately or by the declarants jointly, each making his declaration with respect to the period as to which he has personal knowledge. *In the case of a joint declaration each declarant must state separately with regard to himself the particulars under headings* (*a*), (*b*), *and* (*c*) *above.*

5. The statements in the Memorial must, in addition, be verified generally, and the respectability and loyalty of the applicant must be vouched for, by declarations made in like manner by four persons, each of whom must be—

(*a*) a Householder;

(*b*) a Natural-born British subject; and

(*c*) Not the Agent or Solicitor of the Memorialist.

These particulars and also the declarant's place of residence, his occupation, and the period during which he has personally known the applicant must be set out in the declaration.

The declaration may be made by the declarants jointly, or by each separately. *In the case of a joint declaration each declarant must state for himself separately the particulars under headings* (*a*), (*b*), *and* (*c*) *above.*

The person who acts as Referee under Article 4 of these Instructions may also, if he is a householder, act as Referee under this Article.

6. Every declaration must be duly stamped with the impressed 2*s.* 6*d.* Stamp of the Board of Inland Revenue.

7. The Secretary of State will not accept any declaration which has been made before a Commissioner who is the Agent or Solicitor

Instructions of the Memorialist, or with which the Memorial is not properly connected by being made an exhibit thereto.

8. The statements in the Memorial and the declarations will be made the subject of independent inquiry directed by the Secretary of State.

9. The only fee payable to the Department upon the grant of a Certificate is £5, which will cover the Registration of the Oath of Allegiance. This fee should not be paid until an intimation that the Certificate will be granted is received.

Other fees necessarily involved are the usual fee to the Clerk to the Justices, or the Commissioner for Oaths, as the case may be, for each Statutory Declaration, and a fee of 2*s.* 6*d.* when, the Certificate having been granted, the Oath of Allegiance is taken.

10. When a Certificate is granted further instructions as to taking the Oath of Allegiance and having it registered in the Department will be issued.

HOME OFFICE,
June, 1906.

N.B.—If the foregoing instructions are not closely observed, the papers may have to be returned for amendment, involving delay and possibly additional expense. Forms of memorial and declaration suitable for the purpose are sold by many Law Stationers.

(AA.)

THE NATURALIZATION ACTS, 1870 AND 1895.

INSTRUCTIONS TO ALIENS IN THE SERVICE OF THE CROWN APPLYING FOR CERTIFICATES OF NATURALIZATION.

1. Any alien in the service of the Crown who is desirous of obtaining a Certificate of Naturalization should present to one of His Majesty's Principal Secretaries of State, through the Head of the Department to which he is attached, a Memorial praying for the grant of such a Certificate.

2. The Memorial must state :—

(1.) Of what Foreign State the applicant is a subject, his place of birth, and the names and nationality of his parents.

(2.) His names and address in full, age, and occupation.

(3.) Whether he is married, and has any children, under age, residing with him ; if he has, their names and ages, and the fact that they are so residing should be stated.

(4.) That during the period of eight years immediately preceding the application the applicant has for five years been in the

service of the Crown, the post in which he has served being specified, and the details of the service being shown as follows:— Instructions

			Years.	Months.
From	to	as		
From	to	as		
From	to	as		
			5	

and that he intends to serve under the Crown or reside in the United Kingdom.

3. The applicant must verify the statements in his Memorial by a general declaration connected with the Memorial.

If the applicant is residing in the United Kingdom at the time of his application, the declaration must be made before a Justice of the Peace or other person authorised to receive such declaration in pursuance of the Act 5 & 6 Wm. IV., c. 62, and it must bear an impressed 2*s.* 6*d.* stamp of the Board of Inland Revenue.

If the applicant is residing at the time of his application outside the United Kingdom, but in the British Dominions, he must make a declaration in accordance with the procedure prescribed by the laws of the country in which he is residing.

In the case of an applicant residing out of the British Dominions or in a British Protectorate, the declaration should be made before an Officer in the Diplomatic or Consular Service of His Majesty, or an Officer authorised to receive a statutory declaration in a Protectorate, or the Officer administering the Government of the Protectorate, as the case may be.

4. After obtaining the grant of a Certificate, the grantee must take and subscribe the oath of allegiance, a blank form whereof will be annexed to the Certificate.

The oath of allegiance may be taken and subscribed:—

(1.) In the United Kingdom—

(*a*) England and Ireland:—

In the presence of any Justice of the Peace or any Commissioner (not being the agent or solicitor of the memorialist) authorised to administer oaths in the High Court of Justice.

(*b*) Scotland:—

In the presence of any Sheriff, Sheriff-substitute, or Justice of the Peace.

(2.) In the British Dominions (other than the United Kingdom), according to the procedure prescribed by the law of the country in which the oath is taken.

(3.) Out of His Majesty's Dominions or in a British Protectorate the oath of allegiance may be administered by and subscribed in the presence of an Officer in the Diplomatic or Consular

Instructions

Service of His Majesty, or of an Officer authorised to administer such oath, or of the Officer administering the Government of the Protectorate, as the case may be.

5. After taking and subscribing the oath of allegiance the grantee of the Certificate shall cause the oath to be registered at the Home Office.

6. After registration, the Certificate and oath of allegiance will be re-delivered to the grantee of the Certificate.

HOME OFFICE,
October, 1903.

NATURALIZATION OF ALIENS SERVING IN BRITISH SHIPS.

INSTRUCTIONS.

1. The application of an alien serving in a British Ship must be on the prescribed form, which may be obtained, free of charge, from the Home Office, or at any of the under-mentioned Mercantile Marine Offices—

Aberdeen	Greenock	Manchester
Avonmouth	Grimsby	Newcastle-on-Tyne
Barry	Hull	Newport, Mon.
Belfast	Leith	Penarth
Bristol	Liverpool	Plymouth
Cardiff	London: Dock Street	Shields, North
Cork	„ Poplar	„ South
Dublin	„ Victoria Docks	Southampton
Dundee	„ Tilbury	Sunderland
Glasgow	„ Gravesend	Swansea

The Superintendents of the Mercantile Marine Offices at these ports will assist foreign seamen in making their applications, will take care that the form is properly filled up in each case, and that the applicant clearly understands the particulars to which he declares, and will transmit the papers to the Registrar General of Seamen.

2. The place of birth should be stated in the form of a postal address. It will not be sufficient for the applicant to state, *e.g.*, that he was born at (a village or small town) in Russia; the province, &c., should also be given.

3. The nationality should be stated accurately, *e.g.*, a Russian Pole should be described as a Russian; a German Pole, or a Bavarian, or a Prussian, should be described as a German.

If an applicant has lost the nationality he acquired at birth, such nationality of origin should nevertheless be specified, and an explanation should be given of the circumstances in which it was lost.

Particulars of any naturalization of an applicant in any foreign country other than that to which he originally owed allegiance should be added.

4. The foregoing paragraph applies equally to the particulars required of the nationality of the parents. Instructions

5. Children only temporarily absent from home at the date of the application may be regarded as resident with the father. In any case of doubt the question should be referred through the Registrar General of Seamen to the Secretary of State.

6. The applicant must establish that he is qualified for naturalization by residence in the United Kingdom ; and intervals, during such residence, of service in British ships registered at ports in the United Kingdom, and sailing to or from the United Kingdom, are allowed to count towards making up the qualifying period.

The residence and sea service together must cover a period of five years within the last eight. The applicant must have served in British ships (as defined above) for, at least, three years within the last eight. He is also required to declare that it is his intention to continue to serve in British ships or reside in the United Kingdom.

Particulars of residence ashore must be given as fully and accurately as possible.

7. Particulars should be given of any Certificates which the applicant holds from the Board of Trade. If he holds no Certificates, his present occupation, viz., whether mate, able seaman, cook, &c., should be stated.

8. The statutory declaration required of the applicant must be made before a Magistrate or a Commissioner for Oaths.

9. If the Certificate is granted by the Secretary of State, the oath of allegiance will have to be taken, subscribed and registered in accordance with instructions which will accompany the Certificate.

10. If a Superintendent feels the need of special instructions in any particular case he should submit the matter to the Registrar General of Seamen for reference to the Secretary of State.

11. Except as hereinafter stated no fees will be payable to the Home Office or the Board of Trade when duly authenticated certificates proving sea service and residence in the United Kingdom are produced ; but the following charges will have to be met :—

(*a*) Fee on Statutory declaration.

If made before a Commissioner of Oaths ...		1s. 6d.
„ „	Justice out of Court and unattended by the Clerk to the Justices... ...	Nil.
„ „	Justice in Court or attended by the Clerk	*Such fee as may be in force in the County or Borough in which the Oath or Declaration is made* (generally 1/- or 1/6).

(*b*) An *Impressed* Inland Revenue stamp of the value of 2*s.* 6*d.* on each declaration.

Instructions

(*c*) A fee of 4d. for the verification of sea service on each voyage for which no officially authenticated Certificate of Discharge is produced.

(*d*) A fee for the administration of the oath of allegiance, 2s. 6d., payable as follows:—

In England or Ireland, if the oath is administered by a Justice of the Peace, to the clerk of such Justice, otherwise to the officer administering the oath; in Scotland, if the oath is administered by a Sheriff or Sheriff-Substitute, to the Sheriff Clerk or any of his deputes; if by a Justice of the Peace, to the Clerk of the Peace or any of his deputes.

HOME OFFICE,
WHITEHALL,
October, 1904.

(C.)
NATURALIZATION ACTS, 1870.

INSTRUCTIONS TO PERSONS WITH RESPECT TO WHOSE NATIONALITY A DOUBT EXISTS, AND WHO ARE DESIROUS OF APPLYING FOR SPECIAL CERTIFICATES OF NATURALIZATION UNDER THE NATURALIZATION ACTS, 1870.

1. Any person with respect to whose Nationality a doubt exists, and who is desirous to obtain a special Certificate of Naturalization, may present to one of Her Majesty's Principal Secretaries of State a Memorial praying for the grant of such Certificate.

2. The Memorial must state—

(1.) The name, address, age, profession, trade, or other occupation of the applicant, his place of birth, and the name and nationality of his parents.

(2.) That the applicant is a person with respect to whose nationality doubt exists, and that he desires a special Certificate for the purpose of quieting doubts as to his right to be a British subject.

(3.) Whether the applicant is married, and has any children, under age, residing with him, and, if so, to state their names and ages.

(4.) That during the period of eight years immediately preceding the application, the applicant has for five years resided within the United Kingdom, namely:—

			Years.	Months.
From	to	at*		
From	to	at		
From	to	at		
	or		5	

* The exact address, and, if in town, the name of street and number of house to be given.

That during the period of eight years immediately preceding the application, the applicant has been in the service of the Crown (the post in which he has served being specified), viz. :— Instructions

			Years.	Months.
From	to	as		
From	to	as		
From	to	as		
			5	

(5.) That he intends to reside in the United Kingdom or to serve under the Crown.

3. The applicant must verify the statements in his Memorial by a general declaration made before a magistrate or other person authorised to receive such declaration, in pursuance of the Act passed in the fifth and sixth years of His late Majesty King William IV., chapter 62.

4. The statements in the Memorial with respect to the several periods of residence in the United Kingdom making up the full statutory term, must be verified specifically, as to both place and time, by a like declaration of some person who, being a natural-born British subject, and not the agent or solicitor of the memorialist, is able to testify to the fact of such residence from personal knowledge, and not from information only. Should there be no one such person who has personal knowledge of the memorialist having resided the full statutory term, and should, in consequence, the declaration of two or more persons become necessary for the purpose, the declaration may be made either by each separately, or by the declarants jointly, each with respect to the period as to which he has personal knowledge ; and each such declarant must in his declaration state as to himself the place of his residence, the fact that he is a natural-born British subject and not the agent or solicitor of the memorialist, and that he makes the declaration not from information merely, but from personal knowledge, and he must specify the circumstances under which such knowledge was acquired.

5. In addition, the statements in the Memorial must be further verified generally, and the respectability and loyalty of the applicant vouched for by a declaration made in like manner by four householders who are natural-born British subjects, and neither of them the agent or solicitor of the memorialist. The declaration may be made by such declarants jointly or by each separately ; but each of the declarants must in his declaration state, as to himself, the fact that he is a householder and a natural-born British subject, and not the agent or solicitor of the memorialist, the place of his residence, and the period during which he has personally known the applicant.

6. No declaration will be received which is not duly stamped with the impressed *2s. 6d.* Stamp of the Board of Inland Revenue.

7. The statements in the Memorial and the declarations will be

Instructions made the subject of independent inquiry directed by the Secretary of State.

8. The fee payable upon the grant of a Certificate is 5*l.*, which will include payments for the Registration both of the Certificate and of the oath of allegiance.

9. After obtaining the grant of a Certificate, the grantee must take and subscribe the oath of allegiance, a blank form whereof will be annexed to the Certificate.

10. The oath of allegiance may be taken and subscribed—

In England or Ireland—

In the presence of any Justice of the Peace, or any Commissioner authorised to administer oaths in Chancery.

In Scotland—

In the presence of any Sheriff, Sheriff-Substitute, or Justice of the Peace.

11. The fee for the administration of the oath is 2*s.* 6*d.*, payable as follows:—

In England or Ireland, if the Oath is administered by a Justice of the Peace, to the clerk of such Justice, otherwise to the officer administering the oath; in Scotland, if the oath is administered by a Sheriff or Sheriff-Substitute, to the Sheriff-Clerk or any of his deputes; if by a Justice of the Peace, to the Clerk of the Peace or any of his deputes.

12. After taking and subscribing the oath of allegiance the grantee of the Certificate shall cause the oath to be registered at the Home Office.

13. After Registration, the Certificate and oath of allegiance will be re-delivered to the grantee of the Certificate.

HOME OFFICE,
24*th June* 1880.

N.B.—Care must be taken that the Memorial is made an Exhibit to the Declarations which accompany it so as to connect together the Memorial and Declarations.

(D.)

NATURALIZATION ACTS, 1870.

INSTRUCTIONS TO APPLICANTS IN THE UNITED KINGDOM FOR CERTIFICATES OF RE-ADMISSION TO BRITISH NATIONALITY.

(*These instructions apply only to Certificates granted in the United Kingdom.*)

1. Any person desiring to obtain a Certificate of re-admission to British Nationality must present to one of His Majesty's Principal

Secretaries of State a Memorial praying for the grant of such Certificate. Instructions

2. The Memorial must state—

(1.) The name, address, age, profession, trade, or other occupation of the applicant, his place of birth, and the names and nationality of his parents.

(2.) Whether the applicant is married and has any children, under age, residing with him, and if so, their names and ages.

(3.) That the applicant was a natural born British subject by reason of having been born in British territory, or by reason of his or her father or grandfather, by the father's side, having been a British subject.

(4.) That the applicant became the subject or citizen of a Foreign State. The name of the Foreign State must be specified, and the mode in which the applicant became an Alien. If the applicant became an Alien by Naturalization, the date of such Naturalization must be mentioned; or if the applicant be a widow who became an Alien by marriage with her late husband, the date and place of such marriage, the name of her husband, the date and place of his decease, and the Foreign State of which he was a subject, must be mentioned.

(5.) That during the period of eight years immediately preceding the application, the applicant has for five years resided within the United Kingdom, namely:—

			Years.	Months.
From*	to	at†		
From	to	at		
From	to	at		
			5	

or

That during the period of eight years immediately preceding the application, the applicant has been in the service of the Crown (the post in which he has served being specified), viz.:—

			Years.	Months.
From	to	as		
From	to	as		
From	to	as		
			5	

* The period of residence at each address should be stated as precisely as possible.

† The exact address, and, if in town, the name of street and number of house to be given.

Instructions

(6.) That he intends to reside in the United Kingdom or to serve under the Crown.

3. The applicant must verify the statements in his Memorial by a general declaration made before a magistrate or other person authorised to receive such declaration in pursuance of the Act passed in the fifth and sixth years of His late Majesty King William IV., chapter 62.

4. The statements in the Memorial with respect to the several periods of residence in the United Kingdom making up the full statutory term, must be verified specifically, as to both place and time, by a like declaration of some person, who, being a natural-born British subject, and not the agent or solicitor of the memorialist, is able to testify to the fact of such residence from personal knowledge, and not from information only. Should there be no one such person who has personal knowledge of the memorialist having resided the full statutory term, and should, in consequence, the declaration of two or more persons become necessary for the purpose, the declaration may be made either by each separately, or by the declarants jointly, each with respect to the period as to which he has personal knowledge; and each such declarant must in his declaration state as to himself the place of his residence, the fact that he is a natural-born British subject and not the agent or solicitor of the memorialist, and that he makes the declaration not from information merely, but from personal knowledge, and he must specify the circumstances under which such knowledge was acquired.

5. In addition, the statements in the Memorial must be further verified generally, and the respectability and loyalty of the applicant vouched for by a declaration made in like manner by four householders who are natural-born British subjects, and neither of them the agent or solicitor of the memorialist. The declaration may be made by such declarants jointly or by each separately; but each of the declarants must in his declaration state, as to himself, the fact that he is a householder, and a natural-born British subject, and not the agent or solicitor of the memorialist, the place of his residence, and the period during which he has personally known the applicant.

6. No declaration will be received which is not duly stamped with the *impressed 2s. 6d.* Stamp of the Board of Inland Revenue.

7. The statements in the Memorial and the declarations will be made the subject of independent inquiry directed by the Secretary of State.

8. The Secretary of State, if he thinks fit to grant a Certificate to the applicant, will cause him to be furnished with a blank form of the Certificate and Oath of Allegiance.

9. The applicant will then take and subscribe the Oath of Allegiance.

10. The Oath of Allegiance may be taken and subscribed :—

In England and Ireland—

In the presence of any Justice of the Peace, or any Commissioner authorised to administer oaths in Chancery.

Instructions

In Scotland—

In the presence of any Sheriff, Sheriff-Substitute, or Justice of the Peace.

11. The fee for the administration of the oath is 2*s.* 6*d.*, payable as follows:—

In England or Ireland—

If the oath is administered by a Justice of the Peace, to the Clerk of such Justice, otherwise to the officer administering the oath.

In Scotland—

If the oath is administered by a Sheriff or Sheriff-Substitute, to the Sheriff-Clerk or any of his deputies; if by a Justice of the Peace, to the Clerk of the Peace or any of his deputies.

12. The applicant will forward to the Home Office the blank Certificate and the Oath of Allegiance which has been subscribed, together with a fee of 5*l.*

13. The Certificate will then be signed by the Secretary of State, and the Certificate and Oath of Allegiance will be duly registered without further payment and re-delivered to the applicant.

HOME OFFICE,
March, 1905.

N.B.—Care must be taken that the Memorial is made an Exhibit to the Declarations which accompany it, so as to connect together the Memorial and Declarations.

(A.) & (A.A.)

NATURALIZATION ACTS, 1870.

INSTRUCTIONS TO ALIENS APPLYING FOR CERTIFICATES OF NATURALIZATION.

1. Any Alien desirous to obtain a Certificate of Naturalization, must present to one of His Majesty's Principal Secretaries of State a Memorial praying for the grant of such Certificate.

FORM No. 1.
Memorial.

2. The Memorial must state:—

(1.) Of what Foreign State the applicant is a subject, his place of birth, and the names and nationality of his parents.

(2.) His name, address, age, profession, trade, or other occupation.

(3.) Whether he is married, and has any children, under age, residing with him, and if so to state their names and ages.

Instructions

(4.) That during the period of eight years immediately preceding the application, the Applicant has for five years resided within the United Kingdom, namely:—

			Years.	Months.
From	to	at*		
From	to	at		
From	to	at		
			5	

or

That during the period of eight years immediately preceding the application, the Applicant has been in the service of the Crown (the post in which he has served being specified), viz:—

			Years.	Months.
From	to	as		
From	to	as		
From	to	as		
			5	

(5.) That he intends to reside in the United Kingdom or to serve under the Crown.

FORM No. 2. Declaration by Memorialist.

3. The applicant must verify the statements in his Memorial by a general declaration made before a Magistrate or other person authorized to receive such declaration, in pursuance of the Act passed in the fifth and sixth years of His late Majesty King William IV., chapter 62.

FORM No. 3. Declaration of Reference as to residence.

Paragraph 2.

4. The statements in the Memorial with respect to the several periods of residence in the United Kingdom making up the full statutory term, must be verified specifically as to both place and time by a like declaration of some person, who, being a natural-born British subject, and not the agent or solicitor of the memorialist, is able to testify to (2) the fact of such residence from personal knowledge, and not from information only. Should there be no one such person who has personal knowledge of the memorialist having resided the full statutory term, and should, in consequence, the declaration of two or more persons become necessary for the purpose, the declaration may be made, either by each separately, or by the declarants jointly, each with respect to the period as to which he has personal knowledge; and each such declarant must in his declaration state, as to himself, the place of his residence, the fact (3) that he is a natural-born British subject, and (4) not the agent or solicitor of the memorialist, and (5) that he makes the declaration not from information merely, but from personal knowledge, and he must specify the circumstances under which such knowledge was acquired.

Paragraph 3.
" 4.
" 5.

FORM No. 4. Declaration of References verifying Memorial.

5. *In addition*, the statements in the Memorial must be further verified generally, and the respectability and loyalty of the Applicant

* The exact address, and, if in town, the name of Street and number of house to be given.

vouched for by a declaration made in like manner by FOUR householders who are natural-born British subjects, and neither of them the agent or solicitor of the memorialist. The declaration may be made by such declarants jointly, or by each separately ; but each of the declarants must in his declaration state, as to himself, the fact (1) that he is a householder, and a natural-born British subject, and (2) not the agent or solicitor of the memorialist, the place of his residence, and (3) the period during which he has personally known the Applicant.

Instructions

Paragraph 1.
" 2.
" 3.

6. No declaration will be received which is not duly stamped with the impressed 2*s.* 6*d.* Stamp of the Board of Inland Revenue.

7. The statements in the Memorial and the Declarations will be made the subject of independent inquiry directed by the Secretary of State.

8. The fee payable upon the grant of a Certificate is £5, which will include payments for the Registration both of the Certificate and of the Oath of Allegiance.

9. After obtaining the grant of a Certificate, the grantee must take and subscribe the Oath of Allegiance, a blank form whereof will be annexed to the Certificate.

10. The Oath of Allegiance may be taken and subscribed :—

In England or Ireland—

In the presence of any Justice of the Peace, or any Commissioner authorized to administer Oaths in the Supreme Court.

In Scotland—

In the presence of any Sheriff, Sheriff-Substitute, or Justice of the Peace.

11. The fee for the administration of the Oath is 2*s.* 6*d.*, payable as follows :—

In England or Ireland, if the Oath is administered by a Justice of the Peace, to the Clerk of such Justice, otherwise to the officer administering the Oath. In Scotland, if the Oath is administered by a Sheriff or Sheriff-Substitute, to the Sheriff-Clerk or any of his deputes ; if by a Justice of the Peace, to the Clerk of the Peace or any of his deputes.

12. After taking and subscribing the Oath of Allegiance the grantee of the Certificate shall cause the Oath to be registered at the Home Office.

13. After Registration, the Certificate and Oath of Allegiance will be re-delivered to the grantee of the Certificate.

N.B.—Care must be taken that the Memorial is made an Exhibit to the Declarations which accompany it, so as to connect together the Memorial and Declarations.

Forms

"A."

MEMORIAL FOR CERTIFICATE OF NATURALIZATION.

TO THE RIGHT HONOURABLE HIS MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE HOME DEPARTMENT.

No. 1.

The humble Memorial of of an Alien.

Sheweth

State Nationality of Applicant, place of birth, and the Names and Nationality of his Parents.

1. That your Memorialist is a Natural-born Subject of the of that he was born at

State full Name, Address, Age, Profession, Trade or Occupation.

2. That your Memorialist's name is that he resides at that he is of the age of years having been born on the day of 1 and that he is by a

State whether married, and whether any children under age residing with Memorialist, and if so, their names and ages.

3. That your Memorialist is

* Insert the exact address, and, if in town, the name of street and number of house.

4. That during the period of eight years immediately preceding this Application your Memorialist has for five years resided within the United Kingdom namely:—

			Years.	Months.
From	to	at*		
From	to	at		
From	to	at		

5. That your Memorialist intends to continue to reside permanently within the United Kingdom of Great Britain and Ireland and has no intention of permanently leaving the United Kingdom and your Memorialist is desirous of obtaining the rights and capacities of a Natural-born British subject and a grant of a Certificate for that purpose under the provisions of the Act of Parliament made and passed in the 33rd year of the Reign of Her late Majesty Queen Victoria Cap. 14 intituled "An Act to amend the Law relating to the Legal Condition of Aliens and British Subjects."

6. That the grounds on which your Memorialist seeks to obtain the rights and capacities of a Natural-born British Subject are as follows:—

Because your Memorialist has so long resided in England that he has become attached to the United Kingdom and its Government and having become permanently settled and domiciled in England and intending henceforth permanently

Forms
No. 1.

to reside within the United Kingdom he is desirous and it will be greatly for his benefit and advantage to obtain and exercise and enjoy all the rights and capacities of a Natural-born Subject of the United Kingdom so far as the same are authorized to be granted to the Memorialist by the said Act.

Your Memorialist therefore prays that you will be pleased if you shall think the application warranted by the circumstances of the case to grant to your Memorialist a Certificate of Naturalization under the provisions of the said Act of the 33rd Victoria Cap. 14 and to grant to your Memorialist (upon his taking the Oath prescribed by the said Act and in all respects complying with the provisions of the said Act) all the rights and capacities of a Natural-born British Subject (except such as are by the said Act excepted).

And your Memorialist will ever pray &c.

..... To be signed by Applicant.

This is the Memorial marked "A" referred to in the Declaration of made before me this day of 190 Insert Name of Memorialist.

.....

.....

This is the Memorial marked "A" referred to in the Declaration of made before me this day of 190 Insert Name and Reference as to Residence, etc.

.....

.....

This is the Memorial marked "A" referred to in the Declaration of made before me this day of 190 Insert names of References.

.....

.....

Forms

No. 2.

DECLARATION OF MEMORIALIST.

This form requires a 2s. 6d. Inland Revenue Stamp.

I of in the of an Alien, do solemnly and sincerely declare as follows :—

That the statements contained in the paper writing now produced and shewn to me marked with the letter "A" purporting to be a Memorial addressed by myself to The Right Honourable His Majesty's Principal Secretary of State for the Home Department praying for the grant of a Certificate of Naturalization under the provisions of the Act of Parliament made and passed in the 33rd year of the reign of Her late Majesty Queen Victoria Cap. 14 intituled "An Act to amend the Law relating to the Legal Condition of Aliens and British Subjects" are true as therein set forth.

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at
this day of 190 .
Before me

No. 3.

DECLARATION OF REFERENCE AS TO RESIDENCE, &c., OF MEMORIALIST.

This form requires a 2s. 6d. Inland Revenue Stamp.

I of in the of do solemnly and sincerely declare as follows :—

1. That the statements contained in * the paper writing now produced and shewn to me marked with the letter "A" purporting to be a Memorial addressed by to The Right Honourable His Majesty's Principal Secretary of State for the Home Department praying for the Grant of a Certificate of Naturalization under the provisions of the Act of Parliament made and passed in the 33rd year of the Reign of Her late Majesty Queen Victoria Cap. 14 intituled "An Act to amend the Law relating to the Legal Condition of Aliens and British Subjects" are to my personal knowledge true as therein set forth.

2. That to my personal knowledge the said has during the period of Eight years immediately preceding the date of the said Memorial for Five years resided within the United Kingdom namely—

			Years.	Months.
From	to	at†		
From	to	at		
From	to	at		

* Note.—If declarant cannot speak of his own knowledge as to the whole of the Memorial insert here "paragraphs Nod. —— of ——."

† Insert the exact address, and if in town, the name of street and number of house.

Forms

No. 3.

3. That I am a Natural-born British Subject.

4. That I am not the Agent or Solicitor of the said .

5. That I make this Declaration not from information merely but from personal knowledge.

Specify circumstances under which such knowledge was acquired.

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at
this day of 190 .
Before me

DECLARATION OF REFERENCE.

No. 4.

This form requires a 2s. 6d. impressed Inland Revenue Stamp.

I of in the of do solemnly and sincerely declare as follows—

1. That I am a Householder and Natural-born British Subject.

2. That I am not the Agent or Solicitor of the Alien hereinafter mentioned.

3. That for years past and upwards I have personally known and been intimately acquainted with the said of in the of an Alien and from such personal knowledge and intimate acquaintance as aforesaid I am able to vouch for the respectability and loyalty of the said .

4. That I have carefully perused the paper writing now produced and shewn to me marked with the letter "A" purporting to be a Memorial addressed to the Right Honourable His Majesty's Principal Secretary of State for the Home Department by the said praying for the grant of a Certificate of Naturalization under the provisions of the Act of Parliament made and passed in the 33rd year of the Reign of Her late Majesty Queen Victoria Cap. 14 intituled "An Act to amend the Law relating to the legal condition of Aliens and British Subjects" and I verily believe that the particulars and statements therein respectively stated are true as therein set forth.

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at
this day of 190 .
Before me

CANADIAN NATURALIZATION ACT.

REVISED STATUTES, 1886.

CHAPTER 113.

A.D. 1886

An Act respecting Naturalization and Aliens.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Short Title.

Short title.

1. This Act may be cited as "The Naturalization Act," 44 Vict. c. 13. s. 3.

Interpretation.

Interpretation.

2. In this Act, unless the context otherwise requires,—

"Disability."

(*a.*) The expression "disability" means the disability of being an infant, lunatic, idiot, or married woman ;

"Officer in diplomatic service of H.M."

(*b.*) The expression "officer in the diplomatic service of Her Majesty" means any ambassador, minister, or chargé d'affaires, or secretary of legation, or any person appointed by such ambassador, minister, chargé d'affaires, or secretary of legation, to execute any duty imposed upon an officer in the diplomatic service of Her Majesty by the Act passed by the Parliament of the United Kingdom, known as "The Naturalization Act, 1870" ;

"Officer in consular service of H.M."

(*c.*) The expression "officer in the consular service of Her Majesty" means and includes consul-general, consul, vice-consul and consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul or consular agent ;

"Oath."

(*d.*) The expression "oath" includes affirmation, in the case of a person allowed by law to affirm in judicial cases ;

"County."

(*e.*) The expression "county" includes a union of counties and a judicial district or other judicial division ;

"Alien."

(*f.*) The expression "alien" includes a statutory alien ;

"Statutory alien."

(*g.*) The expression "statutory alien" means a natural-born British subject who has become an alien under this Act or any Act or Acts in that behalf ;

"Subject."

(*h.*) The expression "subject" includes a citizen when the foreign country referred to is a republic. 44 Vict. c. 13, s. 1, and s. 20, part.

Rights of Property of Aliens.

Aliens may hold and transmit property of any kind.

3. Real and personal property of any description may be taken, acquired, held, and disposed of by an alien in the same manner, in all respects, as by a natural-born British subject ; and a title to real and

personal property of any description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject; but nothing in this section shall qualify an alien for any office, or for any municipal, parliamentary, or other franchise; nor shall anything therein entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly conferred upon him:

To have only rights expressly given.

(2.) The provisions of this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the fourth day of July, one thousand eight hundred and eighty-three, or in pursuance of any devolution by law on the death of any person dying before the said date; nor shall the provisions of this section qualify an alien to be the owner of a British ship. 44 Vict. c. 13, s. 4.

Act not to affect certain dispositions.

As to owning ships.

Expatriation.

4. Whenever Her Majesty has entered into a convention with any foreign state to the effect that the subjects of that state who are naturalized as British subjects may divest themselves of their status as British subjects, and whenever Her Majesty, by Order in Council, passed under the third section of the Act passed by the Parliament of the United Kingdom, known as "The Naturalization Act, 1870," has declared that such convention has been entered into by Her Majesty—from and after the date of such Order in Council, any person originally a subject of the state referred to in such order, who has been naturalized as a British subject within Canada, may, within such limit of time as is prescribed in the convention, make a declaration of alienage, and from and after the date of his so making such declaration, such person shall, within Canada, be regarded as an alien, and as a subject of the state to which he originally belonged, as aforesaid. 44 Vict. c. 13, s. 5.

Declaration of alienage in cases within convention with a foreign state.

Effect of such declaration.

5. Any such declaration of alienage may be made before any of the persons following, that is to say:—

Before whom such declaration may be made.

(*a.*) If the declarant is in the United Kingdom,—in the presence of any justice of the peace:

(*b.*) If elsewhere in Her Majesty's dominions,—in the presence of any judge of any court of civil or criminal jurisdiction, or of any justice of the peace, or of any other officer for the time being authorised by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose;

(*c.*) If out of Her Majesty's dominions,—in the presence of any officer in the diplomatic or consular service of Her Majesty. 44 Vict. c. 13, s. 6.

Canadian Naturalization Act, 1886

Declaration of alienage by persons being H.M's. subjects by birth, but also subjects of a foreign state by the law thereof.

6. Any person who, by reason of his having been born within the dominions of Her Majesty, is a natural-born subject, but who, also, at the time of his birth became, under the law of any foreign state, a subject of such state, and is still such subject, may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage, such person shall, within Canada, cease to be a British subject:

Declaration of alienage by the child of a British subject.

(2.) Any person who is born out of Her Majesty's dominions of a father being a British subject, may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such delaration shall, within Canada, cease to be a British subject. 44 Vict. c. 13, s. 7.

Repatriation.

Alienage in Canada of British subject naturalized in a foreign state.

7. Any British subject who has, at any time before or at any time after the fourth day of July, one thousand eight hundred and eighty-three, when in any foreign state and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed, within Canada, to have ceased to be a British subject, and shall be regarded as an alien; but when—

How such subject may remain a British subject in Canada.

Declaration and its effect.

Except when he is within such foreign state.

Any British subject has, before the fourth day of July, one thousand eight hundred and eighty-three, voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject within Canada, he may, at any time within two years after the said last-mentioned date, make a declaration, that he is desirous of remaining a British subject, and upon such declaration, (hereinafter referred to as a declaration of British nationality), being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject within Canada,—with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed, within Canada, to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect:

Where and before whom such declaration may be made.

(2.) Such declaration of British nationality may be made, and the oath of allegiance be taken, before any of the persons following, that is to say:—

(*a.*) If the declarant is in the United Kingdom,—in the presence of a justice of the peace;

(*b.*) If elsewhere in Her Majesty's dominions,—in the presence of any judge of any court of civil or criminal jurisdiction, or of any justice of the peace, or of any other officer for the time being authorised by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose;

(*c*.) If out of Her Majesty's dominions,—in the presence of any officer in the diplomatic or consular service of Her Majesty. 44 Vict. c. 13. s. 9. **Canadian Naturalization Act, 1886**

Naturalization.

8. Any alien who, within such limited time before taking the oaths or affirmations of residence and allegiance and procuring the same to be filed of record as hereinafter prescribed, as is allowed by order or regulation of the Governor in Council, has resided in Canada for a term of not less than three years, or has been in the service of the Government of Canada or of any of the Provinces of Canada, or of two or more of such Governments, for a term of not less than three years, and intends, when naturalized, either to reside in Canada or to serve under the Government of Canada or of the Government of one of the Provinces of Canada, or two or more of such Governments, may take and subscribe the oaths of residence and allegiance or of service and allegiance in the form A in the schedule to this Act, or to the like effect, and apply for a certificate in the form B in said schedule. 44 Vict. c. 13. s. 10. Alien subject to certain conditions may take oaths and apply for certificate as a British subject.

9. Every such oath shall be taken and subscribed by such alien, and may be administered to him before any of the following persons, that is to say: A judge of a court of record in Canada, a commissioner authorised to administer oaths in any court of record in Canada, a commissioner authorised by the Governor-General to take oaths under this Act, a justice of the peace of the county or district where the alien resides, a notary public, a stipendiary magistrate, or a police magistrate. 44 Vict. c. 13. s. 11. Where and before whom such oaths may be taken.

10. The alien shall adduce, in support of such application, such evidence of his residence or service, and intention to reside or serve, as the person before whom he takes the oaths aforesaid requires; and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant to such alien a certificate in the form B in the schedule to this Act, or to the like effect. 44 Vict. c. 13. s. 12. Evidence of residence or service required.

11. Such certificate shall be presented,— Presentation of certificate.

In Ontario, to the court of general sessions of the peace of the county within the jurisdiction of which the alien resides, or to the court of assize and *nisi prius* during its sitting in such county; In Ontario.

In Quebec, to the circuit court in and for the circuit within the jurisdiction of which the alien resides; In Quebec.

In Nova Scotia, to the supreme court, during its sittings in the county within the jurisdiction of which the alien resides, or to the county court of such county; In Nova Scotia.

In New Brunswick, to the supreme court or the court of assize and *nisi prius* during its sittings in the county within the jurisdiction of which the alien resides, or to the county court of such county; In New Brunswick.

In British Columbia, to the supreme court of British Columbia, during its sittings in the electoral district within the jurisdiction of In British Columbia.

Canadian Naturalization Act, 1886

which the alien resides, or to the court of assize and *nisi prius* during its sittings in such electoral district, or to the county court of such electoral district;

In Manitoba.

In Manitoba, to the court of Queen's Bench during its sittings in the county within the jurisdiction of which the alien resides, or to the court of assize and *nisi prius* during its sittings in such county, or to the county court of such county;

In Prince Edward Island.

In Prince Edward Island, to the supreme court of judicature during its sittings in the county within which the alien resides, or to the court of assize and *nisi prius* during its sittings in such county, or to the county court of such county;

To be in open court.

Such presentation shall be made in open court, on the first day of some general sitting of such court; and thereupon such court shall cause the same to be openly read in court; and, if during such sitting, the facts mentioned in such certificate are not controverted, or any other valid objection made to the naturalization of such alien, such court, on the last day of such sitting, shall direct that such certificate shall be filed of record in the court. 44 Vict. c. 13. s. 13.

To be filed of record if not invalidated.

In N. W. T. and Keewatin.

12. In the north-west territories, and in the district of Keewatin, such certificate shall be presented to such authorities or persons as are prescribed by order or regulation of the Governor in Council, and thereupon such authority or person shall take such proceedings with respect to such certificate, and shall cause the same to be filed of record, in such way as is prescribed by such order or regulation. 44 Vict. c. 13. s. 14.

Certificate of naturalization from a court.

13. The alien shall, after the filing of such certificate, be entitled, under the seal of the court, if such certificate has been presented to a court, to a certificate of naturalization in the form C in the schedule to this Act, or to the like effect; and if the certificate has been presented to an authority or person, as prescribed by order or regulation of the Governor in Council, the alien shall be entitled to receive, from such authority or person, a certificate of naturalization, authenticated as is prescribed by such order or regulation. 44 Vict. c. 13. s. 15.

From an authority duly empowered by the Governor in Council.

If certificate of naturalization is on account of service.

14. The certificate granted to an alien who applies for naturalization on account of service under the Government of Canada or of any province or of any two or more of such governments, as hereinbefore provided, shall be filed of record in the office of the Secretary of State of Canada; and thereupon the Governor in Council may authorise the issue of a certificate of naturalization to such alien, in the form D in the schedule to this Act. 44 Vict. c. 13. s. 16.

Rights of alien so naturalized.

Exception when he is within the state of which he was a subject.

15. An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject within Canada,—with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless

he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect. 44 Vict. c. 13. s. 17.

Certificate of naturalization, where nationality is doubtful.

16. A special certificate of naturalization may, in manner aforesaid, be granted to any person with respect to whose nationality, as a British subject, a doubt exists; and such certificate may specify that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be deemed a British subject; and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject; and such special certificate may be in the form E in the schedule to this Act, or to the like effect. 44 Vict. c. 13. s. 18.

Effect thereof.

As to aliens naturalized before 4th July 1883.

17. An alien naturalized previously to the fourth day of July, one thousand eight hundred and eighty-three, may apply for a certificate of naturalization under this Act,—and such certificate may be granted to such naturalized alien upon the same terms and subject to the same conditions upon which such certificate might have been granted if such alien had not been previously naturalized. 44 Vict. c. 13. s. 19.

As to British subject by birth who has become an alien.

Certificate of re-admission within Canada.

18. A statutory alien may, upon the same terms and subject to the same conditions as are required in the case of an alien applying for a certificate of naturalization, apply to the proper court or authority or person in that behalf for a certificate, hereinafter referred to as a "certificate of re-admission to British nationality," re-admitting him to the status of a British subject within Canada; and such certificate may be in the form F in the schedule to this Act, or to the like effect. 44 Vict. c. 13. s. 20.

Rights of statutory alien re-admitted within Canada.

19. A statutory alien, to whom a certificate of re-admission to British nationality within Canada has been granted, shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject within Canada—with this qualification, that within the limits of the foreign state of which he became a subject, he shall not be deemed to be a British subject within Canada, unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty or convention to that effect. 44 Vict. c. 13. s. 23.

Provision in case of certain convention by H.M. with a foreign State.

20. When any foreign State has, before or after the fourth day of July, one thousand eight hundred and eighty-three, entered into a convention with Her Majesty to the effect that the subjects of that State who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign State, and when such convention, or the laws of such foreign State, require a residence in Canada of more than three years, or a service under the Government of Canada, or of any of the Provinces of Canada, or of two or more of such Governments, of more than three years, as a condition precedent to such subjects divesting themselves of their status as such foreign subjects, an alien, being a subject of such foreign State, who desires to divest himself of his status as such subject, may, if at the time of

Canadian Naturalization Act, 1886

taking the oath of residence or service, he has resided or served the length of time required by such convention, or by the laws of the foreign State, instead of taking the oath showing three years' residence or service, take an oath showing residence or service for the length of time required by such convention, or by the laws of the foreign State; and the certificate of naturalization granted to the alien under the foregoing provisions hereof shall state the period of residence or service sworn to:

How alien subject of such State may obtain certificate of naturalization.

What the certificate shall show and its effect.

(2.) Such certificate of naturalization shall likewise state the period of residence or service sworn to; and the statement in such certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever. 44 Vict. c. 13. s. 24.

As to aliens in such case of convention who have become entitled to privileges of British birth in Canada.

21. An alien, who, either before or after the fourth day of July, one thousand eight hundred and eighty-three has, whether under this Act or otherwise, become entitled to the privileges of British birth in Canada, and who is a subject of a foreign State with which a convention to the effect above mentioned has been entered into by Her Majesty, and who desires to divest himself of his status as such subject, and who has resided or served the length of time required by such convention or by the laws of the foreign State, may take the oath of residence or service showing residence or service for the length of time required by such convention or by the laws of the foreign State, and apply for a certificate, or a second certificate, as the case may be, of naturalization under this Act. 44 Vict. c. 13. s. 25.

Status of Married Women and Infant Children.

Married women.

22. A married woman shall, within Canada, be deemed to be a subject of the State of which her husband is, for the time being, a subject. 44 Vict. c. 13. s. 26.

Widow being a British subject by birth who has become an alien by marriage.

23. A widow, who is a natural-born British subject, and who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such at any time during widowhood, obtain a certificate of re-admission to British nationality, within Canada, as hereinbefore provided. 44 Vict. c. 13. s. 27.

Children of British subjects who have become aliens.

24. If the father, being a British subject, or the mother, being a British subject and widow, becomes an alien in pursuance of this Act, every child of such father or mother, who, during infancy, has become resident in the country where the father or mother is naturalized and has, according to the laws of such country become naturalized therein, shall, within Canada, be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject. 44 Vict. c. 13. s. 28.

Children of aliens who have been re-admitted to British nationality.

25. If the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality within Canada, every child of such father or mother who, during infancy, has become resident within Canada with such father or mother, shall be deemed to have resumed the position of a British subject within Canada to all intents. 44 Vict. c. 13. s. 29.

26. If the father, or the mother being a widow, has obtained a certificate of naturalization within Canada, every child of such father or mother, who, during infancy, has become resident with such father or mother within Canada, shall, within Canada be deemed to be a naturalized British subject. 44 Vict. c. 13. s. 30.

If the parents have obtained certificates of naturalization.

27. Nothing in this Act contained shall deprive any married woman of any estate or interest in real or personal property to which she became entitled before the fourth day of July, one thousand eight hundred and eighty-three, or affect such estate or interest to her prejudice. 44 Vict. c. 13. s. 31.

Act not to affect acquired rights of married women.

Regulations.

28. The Governor in Council may, from time to time, make regulations respecting the following matters :—

Regulations as to—

(*a.*) The form and registration of declarations of British nationality ;

Declarations.

(*b.*) The form and registration of certificates of naturalization in Canada ;

Certificates of naturalization—

(*c.*) The form and registration of certificates of re-admission to British nationality within Canada ;

And of re-admission.

(*d.*) The form and registration of declarations of alienage ;

Alienage.

(*e.*) The transmission to Canada, for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act, out of Canada, or of any copies of such declarations or certificates ; also, of copies of entries contained in any register kept out of Canada in pursuance of or for the purpose of carrying the provisions of this Act into effect ;

Transmission of certain documents for purposes of this Act.

(*f.*) With the consent of the Treasury Board, the imposition and application of fees in respect of any registration authorised by this Act to be made, and in respect of the making of any declaration or the granting of any certificate authorised by this Act to be made or granted by this Act ;

Fees on registration, &c.

(*g.*) The persons by whom the oaths may be administered under this Act ;

Oaths.

(*h.*) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested ;

Subscription.

(*i.*) The registration of such oaths ;

Registration.

(*j.*) The persons by whom certified copies of such oaths may be given ;

Copies.

(*k.*) The transmission to Canada, for the purpose of registration or safe keeping, or of being produced as evidence, of any oaths taken in pursuance of this Act out of Canada, or of any copies of such oaths ; also, of copies of entries of such

Transmission when taken out of Canada.

oaths contained in any register kept out of Canada, in pursuance of this Act ;

Proof. (*l.*) The proof, in any legal proceeding, of such oaths ;

Fees. (*m.*) With the consent of the Treasury Board, the imposition and application of fees in respect of the administration or registration of any such oath. 44 Vict. c. 13. s. 32, *part.*

Presumption as to regulations. **29.** Any regulation made by the Governor in Council under this Act shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted here. 44 Vict. c. 13. s. 32, *part.*

Evidence.

Proof of declarations. **30.** Any declaration authorised to be made under this Act may be proved in any legal proceeding, by the production of the original declaration, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the Queen's Privy Council for Canada, or by any person authorised by regulation of the Governor in Council to give certified copies of such declaration ; and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned. 44 Vict. c. 13. s. 33.

Proof of certificates. **31.** A certificate of naturalization, or of re-admission to British nationality, may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the Queen's Privy Council for Canada, or by any person authorised by regulation of the Governor in Council to give certified copies of such certificate ; and the statement of the period of residence or service in a certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever. 44 Vict. c. 13. s. 34.

Proof of entries of registration. **32.** Entries in any register authorised to be made in pursuance of this Act may be proved by such copies and certified in such manner as is directed by regulation of the Governor in Council, by the clerk or acting clerk of the Queen's Privy Council for Canada, or by the Secretary of State ; and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the Governor in Council authorised to be inserted in the register. 44 Vict. c. 13. s. 35.

Registration of certificate in land registry office. **33.** A copy of any certificate of naturalization may be registered in the land registry office of any county or district or registration division within Canada, and a copy of such registry, certified by the registrar or other proper person in that behalf, shall be sufficient evidence of the naturalization of the person mentioned therein, in all courts and places whatsoever. 44 Vict. c. 13. s. 21.

General Provisions.

Commissioners for administering oaths. **34.** The Governor in Council may, from time to time, appoint commissioners to take and administer oaths under this Act. 44 Vict. c. 13. s. 44.

35. If any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien. 44 Vict. c. 13. s. 37.

As to acts done before naturalization.

36. The clerk of the court by which the certificate of naturalization is issued shall, for all services and filings in connection with such certificate, be entitled to receive, from the person naturalized, the sum of twenty-five cents, and no more; and no further or other fee shall be payable for or in respect of such certificate:

Fee on issue of certificate by a court.

(2.) The registrar shall, for recording a certificate of naturalization, be entitled to receive from the person producing the same for registry, the sum of fifty cents, and a further sum of twenty-five cents for every search and certified copy of the same, and no more. 44 Vict. c. 13. s. 22.

And to registrar for recording it.

37. Every person who, being by birth an alien, had, on or before the fourth day of July, one thousand eight hundred and eighty-three, become entitled to the privileges of British birth, within any part of Canada, by virtue of any general or special Act of naturalization in force in such part of Canada, shall hereafter be entitled to all the privileges by this Act conferred on persons naturalized under this Act. 44 Vict. c. 13. s. 38.

As to aliens naturalised in any part of Canada before 4th July 1883.

38. Nothing in this Act contained shall repeal or in any manner affect the Act of the Legislature of Upper Canada, passed in the fifty-fourth year of the reign of His late Majesty King George the Third, intituled "An Act to declare certain persons therein described aliens, "and to vest their estates in His Majesty," or the Act of the legislature of the late province of Canada, passed in the twenty-fourth year of Her Majesty's reign, chaptered forty-four, and intituled "An "Act respecting forfeited estates in Upper Canada," or any proceedings had under the said Acts. 44 Vict. c. 13. s. 39.

Act not to affect Act of U.C., 54 Geo. 3, c. 9.

24 Vict. (Can.) c. 44.

39. Nothing in this Act contained shall repeal or in any manner affect the Act of the legislature of the late province of Canada, passed in the session held in the fourth and fifth years of Her Majesty's reign, chaptered seven, intituled "An Act to secure to and confer upon certain "inhabitants of this province, the civil and political rights of natural-"born British subjects," or the first, second or third sections of the Act of the said legislature, passed in the twelfth year of Her Majesty's reign, chapter one hundred and ninety-seven, intituled "An Act to "repeal a certain Act therein mentioned and to make better "provision for the naturalization of aliens," or impair or affect the naturalization of any person naturalized under the said Acts, or either of them, or any rights acquired by such person or by any other person by virtue of such naturalization, all which shall remain valid and be possessed and enjoyed by such persons respectively. 44 Vict. c. 13. s. 40.

Nor certain Acts of Province of Canada.

4 & 5 Vict. c. 7.

12 Vict. c. 197, ss. 1, 2, and 3.

Nor the rights of those naturalized under them.

40. Every person who, being by birth an alien, did, prior to the first day of January, one thousand eight hundred and sixty-eight, take the oaths of residence and allegiance required by the laws respecting naturalization then in force in that one of the provinces now forming the Dominion of Canada, in which he then resided, shall, within Canada, be admitted to all the rights and privileges of a natural-born

As to persons entitled to b naturalized before January 1868, under the law of any Province of Canada.

Canadian Naturalization Act, 1886

British subject conferred upon naturalized persons by this Act; and the certificate of the judge, magistrate, or other person before whom such oaths were taken and subscribed, shall be evidence of his having taken them; or he may take and subscribe the oath in the form G in the schedule to this Act before some judge, justice, or person authorised to administer the oaths of residence and allegiance under this Act, in the county or district in which he resides. 44 Vict. c. 13. s. 41.

Aliens who had their settled abode in certain Provinces, on certain named days, to be British subjects on taking oaths of allegiance, and residence.

41. All aliens who had their settled place of abode in either of the late Provinces of Upper Canada or lower Canada, or Canada, or in Nova Scotia or New Brunswick, on or before the first day of July, one thousand eight hundred and sixty-seven, or in Rupert's Land or the North-West Territories on or before the fifteenth day of July, one thousand eight hundred and seventy, or in British Columbia on or before the twentieth day of July, one thousand eight hundred and seventy-one, or in Prince Edward Island on or before the first day of July, one thousand eight hundred and seventy-three, and who are still residents in Canada, shall be deemed, adjudged, and taken to be, and to have been entitled to all the privileges of British birth within Canada as if they had been natural-born subjects of Her Majesty; but no such person, being a male, shall be entitled to the benefit of this Act, unless he takes the oaths of allegiance in the form A, and of residence in the form H, in the schedule to this Act, before some justice of the peace or other person authorised to administer oaths under this Act. 44 Vict. c. 13. s. 42.

Where the oaths required shall be filed of record.

42. The oaths taken under the next preceding section shall be filed of record, as follows: If the person making them resides in the province of Ontario, with the clerk of the peace of the county in which he resides; if he resides in the province of Quebec,—with the clerk of the circuit court of the circuit within which he resides; if he resides in Nova Scotia,—with the prothonotary of the Supreme Court; and if he resides in New Brunswick,—with the clerk of the Supreme Court; if he resides in British Columbia,—with the clerk of the Supreme Court of British Columbia; if he resides in Prince Edward Island,—with the clerk of the Supreme Court of Judicature; if he resides in Manitoba,—with the Clerk of the court of Queen's Bench, or with the clerk of the county court of the county in which he resides; if he resides in the North-West Territories or in the district of Keewatin,—with such person or authority as is prescribed by order or regulation of the Governor in Council:

Effect of filing; fee for certificate and its effect.

(2.) Upon the oath being so filed, the person making it shall be entitled to the benefit of this Act and of the privileges of British birth within Canada, and shall also, upon payment of a fee of twenty-five cents, be entitled to a certificate from the person with whom the oaths have been filed, in the form I in the schedule to this Act, or to the like effect; and the production of such certificate shall be *primâ facie* evidence of his naturalization under this Act, and that he is entitled to and enjoys all the rights and privileges of a British subject. 44 Vict. c. 13. s. 43.

43. No alien shall be naturalized within Canada, except under the provisions of this Act. 44 Vict. c. 13. s. 46. Canadian Naturalization Act, 1886

Penalty for false Swearing.

Naturalization to be under this Act only.

44. Every person who wilfully swears falsely, or makes any false affirmation under this Act, shall, on conviction thereof, in addition to any other punishment authorised by law, forfeit all the privileges or advantages which he would otherwise, by making such oath or affirmation, have been entitled to under this Act; but the rights of other persons, in respect of any property or estate derived from or held under him, shall not thereby be prejudiced, unless such persons were cognizant of the false swearing or the making of a false affirmation at the time the title by which they claim to hold under him was created. 44 Vict. c. 13. s. 45 *part.* Punishment for false swearing or affirming. Proviso: certain rights saved.

SCHEDULE.

A.

Oath of Residence.

I, *A.B.*, do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that, in the period of years preceding this date I have resided three (*or* five, *as the case may be*) years in the Dominion of Canada with intent to settle therein, without having been, during such three years (*or* five years, *as the case may be*) a stated resident in any foreign country.—So help me God.

Sworn before me at on the day of .

A.B.

THE NATURALIZATION ACT.

Oath of Service.

I, *A.B.*, do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that, in the period of years preceding this date, I have been in the service of the Government of Canada (*or* of the Government of the Province of , in Canada, *or*, *as the case may be*) for the term of three years, and I intend, when naturalized, to reside in Canada (*or* to serve under the Government of *as the case may be*).

Sworn before me at on the day of .

A.B.

THE NATURALIZATION ACT.

Oath of Allegiance.

I, *A.B.*, do sincerely promise and swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Victoria (*or reigning sovereign for the time being*) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Dominion of Canada, dependent on and belonging to the

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said Kingdom, and that I will defend Her to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against Her person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her Heirs or Successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Her or any of them; and all this I do swear (*or* affirm) without any equivocation, mental evasion or secret reservation.—So help me God.

Sworn before me at this day of .

A.B

B.

THE NATURALIZATION ACT.

Certificate.

I, *C.D.*, (*name and description of the person before whom the oaths have been taken*), do certify that *A.B.*, an alien, on the day of , subscribed and took, before me, the oaths (*or* affirmations) of residence and allegiance (*or* service and allegiance, *as the case may be*), authorised by the eighth section of "The Naturalization Act," and therein swore (*or* affirmed) to a residence in Canada (*or* service, &c.), of years; that I have reason to believe, and do believe, that the said *A.B.*, within the period of years preceding the said day, has been a resident within Canada for (three *or* five, *as the case may be*) years (*or* has been in the service of the Government of Canada for three years; *or as the case may be*), that the said *A.B.* is a person of good character, and that there exists, to my knowledge, no reason why the said *A.B.* should not be granted all the rights and capacities of a natural-born British subject.

Dated at , the day of .

C.D.

If the above certificate is applied for by a person, with respect to whose nationality a doubt exists, and who desires a special certificate of naturalization under section sixteen, add the following:—

"I further certify that the said *A.B.* has doubts as to his nationality as a British subject, and desires a special certificate of naturalization under section sixteen of said Act."

If the above certificate is applied for by a person previously a natural-born British subject, but who became an alien by naturalization, an appropriate statement to that effect should be inserted in the certificate.

C.

THE NATURALIZATION ACT.

Certificate of Naturalization.

Dominion of Canada, Province of .
In the (*name of Court*).

Whereas, *A.B.*, of, &c. (*describing him as formerly of such a place in such a foreign country, and now of such a place in Canada, and adding his occupation or addition*), has complied with the several requirements of "The Naturalization Act," and has duly resided in Canada for the period of (three *or* five, *as the case may be*) years. And whereas the certificate granted to the said *A.B.*,

under the tenth section of the said Act, has been duly read in open court, and thereupon, by order of the said court, has been filed of record in the same, pursuant to the said Act (¶). This is, therefore, to certify to all whom it may concern, that under and by virtue of the said Act, *A.B.* has become naturalized as a British subject (§) and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject (*or* citizen), previous to the date hereof, be deemed to be a British subject, unless he has ceased to be a subject (*or* citizen) of that State, in pursuance of the laws thereof or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court, this day of , one thousand eight hundred and .

E. F.

Judge, Clerk (*or other proper officer of the Court*).

This form may be altered so as to apply to the North-West Territories or District of Keewatin.

D.

THE NATURALIZATION ACT.

Certificate of Naturalization to a person after service under Government.

Whereas, *A.B.*, of (*describing him and adding his occupation or addition*), has complied with the several requirements of "The Naturalization Act," and has been in the service of the Government of Canada (*or as the case may be*) for a term of not less than three years, and intends, when naturalized, to reside in Canada (*or* to serve under the Government of , *as the case may be*); and whereas the certificate granted to the said *A.B.*, under the tenth section of the said Act, has been duly filed of record in the office of Her Majesty's Secretary of State of Canada, pursuant to the said Act; and whereas the Governor in Council has duly authorised the issue of this certificate of naturalization: This is, therefore, to certify to all whom it may concern that under and by virtue of the said Act, the said *A.B.* has become naturalized as a British subject and is, within Canada, entitled to all political and other rights, powers, and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (*or* citizen) of that State in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under my hand, this day of .

Secretary of State of Canada.

E.

THE NATURALIZATION ACT.

Special Certificate of Naturalization to a person with respect to whose Nationality a doubt exists.

Follow Form C down to the sign ¶—then add:

And whereas the said *A.B.* alleges that he is a person with respect to whose nationality as a British subject a doubt exists, and this certificate is

Canadian Naturalization Act, 1886

issued for the purpose of quieting such doubts, and the application of the said *A.B.* therefor and the issuing thereof shall not be deemed to be any admission that the said *A.B.* was not heretofore a British subject—(*then continue the rest of Form C to the end*).

Form D to be altered in a similar way when necessary.

F.

THE NATURALIZATION ACT.

Certificate of re-admission to British Nationality.

Formal part, as in Form C.

Whereas, *A.B.*, of (*describing him as in Form C*), who alleges that he was a natural-born British subject, and that he became an alien by being naturalized as a subject (*or* citizen) of has complied with the several requirements of "The Naturalization Act," and has duly resided in Canada for the period of three (*or* five, *as the case may be*) years; and whereas the certificate granted to the said *A.B.*, under the tenth section of the said Act, has been duly read in open court, and thereupon, by order of the said court, has been filed of record in the same, pursuant to the said Act: This is, therefore, to certify to all whom it may concern that, under and by virtue of the said Act, the said *A.B.*, from the date of this certificate, but not in respect of any previous transaction, is re-admitted to the status of a British subject—(*then follow Form C from the sign § to the end*).

Form D to be altered in a similar way when necessary.

Where the applicant is a widow, the Form shall be modified accordingly and recite that she became an alien by marriage with her late husband, L.M., *a subject* (or *citizen*) of .

G.

THE NATURALIZATION ACT.

I, *A.B.*, of , do swear (*or* affirm) that on or about the day of one thousand eight hundred and , at , in the (county, *or as the case may be*), of , in the Province of , I did take and subscribe before (*a judge, magistrate or other person, naming him*) the oaths (*or* affirmations) of residence and allegiance required by the laws respecting the naturalization of aliens then in force in the said Province.—So help me God.

A.B.

Sworn to before me at , on the day of 18 .

H.

THE NATURALIZATION ACT.

I, *A.B.*, of , do swear (*or* affirm) that I had a settled place of abode in (Upper Canada, Lower Canada, Novia Scotia, *or* New Brunswick, *as the case may be*), on the first day of July, A.D. 1867 (*or* in Rupert's Land or the North-West Territories, on the fifteenth day of July, A.D. 1870), (*or* in British Columbia, on the twentieth day of July, A.D. 1871), (*or* in Prince Edward Island, on the first day of July, A.D. 1873), and I resided therein with intent to settle therein; and I have continuously since resided in the Dominion of Canada.—So help me God.

A.B.

Sworn before me at , on the day of 18 .

Canadian Naturalization Act, 1886

I.

THE NATURALIZATION ACT.

I hereby certify that *A.B.*, of , has filled with me as (clerk of the peace, *or as the case may be*) the oath (*or* affirmation) of which the following is a copy :—

(*Copy the Oath or Affirmation.*)

This certificate is issued pursuant to the forty-second section of "The "Naturalization Act," and is to certify to all to whom it may concern that

(*Follow Form C.*)

44 Vict. c. 13, sch.

NEW SOUTH WALES DENIZATION ACT, 1828.

No. VI.

An Act for enabling the Governor or acting Governor of New South Wales to Grant letters of denization to such Foreigners as may arrive in the Colony with a recommendation to that effect from His Majesty's Principal Secretary of State for the Colonies (3rd July 1828). Denization.

WHEREAS it is expedient that due encouragement should be given to all respectable persons who may be desirous of settling in the Colony of New South Wales And whereas foreign officers who may have been employed in the service of Great Britain and other strangers and subjects of foreign powers might be induced to come with their properties to the said Colony if they were enabled to become partakers of the advantages and privileges which the natural-born subjects of His Majesty enjoy Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council That it shall and may be lawful for the Governor or Acting Governor of the said Colony to grant Letters of Denization under the seal of the Colony to all such foreign officers or persons as shall arrive in the said Colony with a recommendation to that effect from His Majesty's Principal Secretary of State for the Colonies Provided every such foreign officer or person shall apply for such Letters of Denization by petition addressed to the Governor or Acting Governor for the time being setting forth the intention of the petitioner to settle in the said Colony and also his native country his age profession trade or usual occupation. Preamble. Governor to grant letters of Denization. Proviso.

2. And be it further enacted That every person who shall receive Letters of Denization in virtue of this Act shall be deemed to be qualified to hold lands in the said Colony and its Dependencies and shall be entitled to all rights privileges and advantages in the said Colony which are conferred by ancient usage or by any Act of Parlia-

New South Wales Act, 1828

ment now in force upon any denizen in England Provided that such person shall within one calendar month after the date of such Letters of Denization have taken and subscribed the oaths and have subscribed the declaration directed and appointed in and by a certain Act passed in the first year of the reign of His Majesty King George the first intituled "An Act for the further Security of His Majesty's Person and Government and the Succession of the Crown in the Heirs of the late Princess Sophia being Protestants and for extinguishing the Hopes of the pretended Prince of Wales and his open and secret Abettors" and which said oaths and declaration the Chief Justice or either of the other Judges of the Supreme Court of New South Wales is hereby required and empowered to administer and receive in manner and form as in the said Act is prescribed.

Oaths to be taken within one month.

3. And be it further enacted That the said Chief Justice or other Judge before whom such oaths shall have been taken and such declaration shall have been subscribed as aforesaid shall immediately afterwards certify the same upon the back of the said Letters of Denization and shall cause such Letters of Denization and the certificate so to be endorsed thereon to be recorded in the Supreme Court of the said Colony and a certificate of such record shall be deemed and taken in every Court within the said Colony and its Dependencies to be a sufficient proof of the person to whom such Letters of Denization shall have been granted as aforesaid being a denizen subject of Great Britain to all intents and purposes whatsoever.

Letters of Denization to be recorded in the Supreme Court.

NEW SOUTH WALES DENIZATION ACT, 1898.

I certify that this Public Bill, which originated in the Legislative Council, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

Legislative Council Chamber, Sydney, 6th July, 1898. } JOHN J. CALVERT, Clerk of the Parliaments.

Anno Sexagesimo Secundo Victoriæ Reginæ.

Act No. 21, 1898.

An Act to consolidate the Laws relating to the naturalization and denization of Aliens. [Assented to, 27th July, 1898.]

Preamble.

WHEREAS by the Imperial Act of the thirty-third year of Her present Majesty, intituled An Act to amend the Law relating to the Legal conditions of Aliens and British Subjects, it is enacted that all laws, statutes, and ordinances which may be duly made by the Legislature of any British Possession for imparting to any person the privileges or any of the privileges of naturalization to be enjoyed by such person within the limits of such Possession shall, within such limits, have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner and subject to the

same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that Possession: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:— New South Wales Act, 1898

PART I.

Preliminary.

1. This Act may be cited as the "Naturalization and Denization Act of New South Wales, 1898," and is divided into parts, as follows:— Short title and division.

PART I.—Preliminary.—ss. 1–3.
PART II.—Rights and disabilities of aliens.—s. 4.
PART III.—Naturalization.—ss. 5–11.
PART IV.—Denization.—ss. 12–14.

2. The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed. Repeal. First Schedule.

3. Nothing in this Act shall deprive any person of any estate or interest in any property to which such person is entitled at the time of the passing of this Act, or shall affect such estate or interest to such person's prejudice. Provision for protection of existing interests. 39 Vict. No. 19, s. 14.

PART II.

Rights and disabilities of aliens.

4. Real and personal property of every description in New South Wales may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to any such property may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural-born British subject: Capacity of aliens as to real and personal property. *Ibid.* s. 3.

Provided that nothing in this section contained—

(*a*) shall qualify an alien for any office, or extend or be construed to confer any parliamentary, municipal, or other franchise in New South Wales;

(*b*) shall qualify an alien to be the owner of a British ship;

(*c*) shall affect any estate or interest in real or personal property in New South Wales to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act; or

(*d*) shall entitle an alien to any right or privileges as a British subject in New South Wales, except such rights and privileges in respect of property or otherwise as are hereby expressly given or extended to him.

New South Wales Act, 1898

PART III.

Naturalization.

Certificate of naturalization. 39 Vict. No. 19, s. 4.

5.—(1.) An alien who has resided in New South Wales for a term of not less than five years, and who intends when naturalized to reside in New South Wales, may apply to the Governor for a certificate of naturalization:

Provided that the said term of residence shall have taken place within such limited time before making the said application as may be allowed by the Governor, either by general order or on any special occasion.

Evidence in support of application.

(2.) The applicant shall produce in support of his application—

(*a*) his own statutory declaration stating his name, age, birthplace, occupation, and residence; and

(*b*) a like declaration of some other person as to the applicant's term of residence in New South Wales,

and shall give such further evidence of the completion by him of the said term of residence, and of his intention to reside in New South Wales as the Governor may require.

Powers of Governor.

(3.) The Governor, if satisfied with the evidence adduced, shall take the applicant's case into consideration, and may, with or without assigning any reason, grant or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.

Oath to be taken.

(4.) No such certificate shall have any effect until the applicant has taken the oath of allegiance hereinafter prescribed.

Oath of allegiance before whom taken. *Ibid.* s. 5.

Second Schedule.

6. If the Governor thinks fit to grant such certificate of naturalization he shall direct the applicant to take the oath of allegiance in the form of the Second Schedule hereto before some Judge of the Supreme Court, or of a District Court, or before some police magistrate, or justice of the peace; and upon the certificate of such Judge, police magistrate, or justice, that the applicant has taken before him the said oath, he shall issue to the applicant a certificate of naturalization accordingly.

Effect of certificate of naturalization. *Ibid.* s. 6.

7. Every person to whom a certificate of naturalization under this Act is granted shall in New South Wales be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in New South Wales, anything in the Constitution Act, section two, to the contrary notwithstanding.

Status of married women. *Ibid.* s. 7.

8.—(1.) Every married woman shall in New South Wales be deemed to be a subject of the state of which her husband is for the time being a subject.

Alien married woman.

(2.) Every alien woman married to a natural-born British subject or to a person who has obtained a certificate of naturalization under this Act shall be deemed to be herself naturalized and to have had in New South Wales from the time of her marriage all the rights and privileges of a natural-born British subject.

(3) Every child under the age of sixteen years— Children.

(*a*) whose father or mother was at the time of the birth of such child an alien but afterwards obtained a certificate of naturalization; or

(*b*) whose mother being an alien marries a natural-born British subject,

shall, if such child was resident in New South Wales at any time while under that age, be deemed naturalized and to have all the rights and privileges of a natural-born British subject.

9. When any person resident in New South Wales desires to be naturalized here, and has previously obtained any certificate of naturalization in the United Kingdom or in any British Colony, if such person,— Persons naturalized in other British Colonies may be naturalized in New South Wales. 39 Vict. No. 19, s. 8.

(*a*) submits such certificate to the Governor; and

(*b*) further satisfies the Governor that he is the person named in such certificate, and that the same was obtained without any fraud or intentional false statement, and that the signature and the seal (if any) thereto are to the best of his belief and knowledge genuine,

the Governor may at his discretion grant such person a certificate of naturalization without requiring from him any further residence in New South Wales or other condition.

10.—(1) The Colonial Secretary shall— Record of certificate, &c. *Ibid.* s. 9.

(*a*) enrol for safe custody as of record all certificates of naturalization granted under this Act; and

(*b*) demand and receive from every person to whom such certificate is granted the fee of one pound in respect of such enrolment; and

(*c*) cause to be made proper indexes to such certificates, and permit every person desirous of so doing at all reasonable times to inspect the same and make copies of such certificates, on payment of the fee of one shilling for every such inspection.

(2) No person to whom any such certificate is granted shall be liable to any other fees or charges for such certificate, enrolment, or otherwise. Fees.

11. A certificate of naturalization may be proved in any proceeding in any court by the production of— Certificate, how proved. *Ibid.* s. 11.

(*a*) the original certificate; or

(*b*) any copy thereof certified to be a true copy under the hand of the Colonial Secretary.

PART IV.

Denization.

12. When any foreign officer or person arrives in New South Wales with a recommendation from Her Majesty's Principal Secretary of State for the Colonies for the granting to him of letters of denization- Governor may grant letters of denization. 9 Geo. IV. No. 6, s. 1.

New South Wales Act, 1898

tion, if such foreign officer or person applies for letters of denization by petition addressed to the Governor setting forth his native country, age, profession, trade, or usual occupation, and his intention to settle in New South Wales, the Governor in exercise of the prerogative right of the Crown as now exercised by him, may grant letters of denization under the seal of New South Wales to such foreign officer or person.

Effect of letters of denization. *Ibid.* s. 2.

13.—(1) If any person who receives letters of denization in virtue of this Act within one month after the date thereof takes and subscribes the oaths, and subscribes the declaration directed and appointed in and by the Imperial Act first George the First, statute two, chapter thirteen, such person shall be qualified to hold lands in New South Wales, and shall be entitled to all such rights and privileges as are conferred by ancient usage or by any Imperial Act in force on the third day of July, in the year one thousand eight hundred and twenty-eight, upon any denizen in England.

(2) The Chief Justice or any Judge of the Supreme Court shall, upon the request of such person, administer and receive the said oaths and declaration in manner and form as in the said Act is prescribed.

Letters of denization to be recorded in the Supreme Court. *Ibid.* s. 3.

14.—(1) The Chief Justice or Judge before whom such oaths are taken and such declaration subscribed as aforesaid, shall immediately afterwards certify the same upon the back of the said letters of denization and shall cause such letters of denization and the certificate so indorsed thereon to be recorded in the Supreme Court.

Proof of certificate.

(2) A certificate of such record shall be deemed in every court in New South Wales to be a sufficient proof that the person to whom such letters of denization were granted as aforesaid is a denizen subject of Great Britain to all intents and purposes whatsoever.

SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of Repeal.
9 Geo. IV. No. 6 .	An Act for enabling the Governor or Acting Governor of New South Wales to grant Letters of Denization to such foreigners as may arrive in the Colony with a recommendation to that effect from His Majesty's Principal Secretary of State for the Colonies.	The whole.
39 Vict. No. 19 .	Naturalization Act of New South Wales.	The whole.

SECOND SCHEDULE.

New South Wales Act, 1898

I, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law.—So HELP ME GOD. Section 6. 39 Vict. No. 19, s. 10.

In the name and on the behalf of Her Majesty I assent to this Act.

HAMPDEN,
Governor.

GOVERNMENT HOUSE,
SYDNEY, 27*th July*, 1898.

CONVENTION BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA RELATIVE TO NATURALIZATION.

Signed at London, May 13, 1870.

[*Ratifications exchanged at London, August* 10, 1870.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being desirous to regulate the citizenship of British subjects who have emigrated or who may emigrate from the British dominions to the United States of America, and of citizens of the United States of America who have emigrated or who may emigrate from the United States of America to the British dominions, have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

And the President of the United States of America, John Lothrop Motley, Esquire, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

British subjects who have become, or shall become, and are naturalised according to law within the United States of America as citizens thereof, shall, subject to the provisions of Article II, be held by Great Britain to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain.

Reciprocally, citizens of the United States of America who have

become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of Article II. be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States.

ARTICLE II.

Such British subjects as aforesaid who have become and are naturalized as citizens within the United States, shall be at liberty to renounce their naturalization and to resume their British nationality, provided that such renunciation be publicly declared within two years after the twelfth day of May, 1870.

Such citizens of the United States as aforesaid who have become and are naturalized within the dominions of Her Britannic Majesty as British subjects, shall be at liberty to renounce their naturalization and to resume their nationality as citizens of the United States, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the present Convention.

The manner in which this renunciation may be made and publicly declared shall be agreed upon by the Governments of the respective countries.

ARTICLE III.

If any such British subject as aforesaid, naturalized in the United States, should renew his residence within the dominions of Her Britannic Majesty, Her Majesty's Government may, on his own application and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

In the same manner, if any such citizen of the United States as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence in the United States, the United States Government may, on his own application and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of a citizen of the United States, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization.

ARTICLE IV.

The present Convention shall be ratified by Her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

(L.S.) CLARENDON.
(L.S.) JOHN LOTHROP MOTLEY.

CONVENTION BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA, SUPPLEMENTARY TO THE CONVENTION OF MAY 13, 1870, RESPECTING NATURALIZATION.

Signed at Washington, February 23, 1871.

[*Ratifications exchanged at Washington, May* 4, 1871.]

Whereas by the Second Article of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America for regulating the citizenship of subjects and citizens of the Contracting Parties who have emigrated or may emigrate from the dominions of the one to those of the other party, signed at London, on the 13th of May, 1870, it was stipulated that the manner in which the renunciation by such subjects and citizens of their naturalization, and the resumption of their native allegiance, may be made and publicly declared, should be agreed upon by the Governments of the respective countries; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the President of the United States of America, for the purpose of effecting such agreement, have resolved to conclude a Supplemental Convention, and have named as their Plenipotentiaries, that is to say: Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, and Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and the President of the United States of America, Hamilton Fish, Secretary of State; who have agreed as follows:—

Article I.

Any person being originally a citizen of the United States who had, previously to May 13, 1870, been naturalized as a British subject, may at any time before August 10, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may, at any time before May 12, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing, substantially in the form hereunto appended, and designated as Annex A.

Such renunciation by an original citizen of the United States, of British nationality, shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any Court authorized by law for the time being to admit aliens to naturalization, or before the Clerk or Prothonotary of any such Court: if the declarant be beyond the territories of the United States, it shall be made in duplicate, before any Diplomatic or Consular officer of the United States. One of such duplicates shall remain of record in the custody of the Court or officer in whose presence it was made; the other shall be, without delay, transmitted to the Department of State.

Such renunciation, if declared by an original British subject, of his

acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of Great Britain and Ireland, be made in duplicate, in the presence of a Justice of the Peace; if elsewhere in Her Britannic Majesty's dominions, in triplicate, in the presence of any Judge of civil or criminal jurisdiction, of any Justice of the Peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose: if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the Diplomatic or Consular Service of Her Majesty.

ARTICLE II.

The Contracting Parties hereby engage to communicate each to the other, from time to time, lists of the persons who, within their respective dominions and territories, or before their Diplomatic and Consular officers, have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

ARTICLE III.

The present Convention shall be ratified by Her Britannic Majesty, and by the President of the United States by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at Washington as soon as may be convenient.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Washington, the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-one.

(L.S.) EDWD. THORNTON.
(L.S.) HAMILTON FISH.

ANNEX (A).

I, A. B., of (*insert abode*), being originally a citizen of the United States of America (*or a British subject*), and having become naturalized within the dominions of Her Britannic Majesty as a British subject (*or as a citizen within the United States of America*), do hereby renounce my naturalization as a British subject (*or citizen of the United States*); and declare that it is my desire to resume my nationality as a citizen of the United States (*or British subject*).

(Signed) *A. B.*

Made and subscribed before me, in (*insert country or other subdivision, and state, province, colony, legation, or consulate*), this day of , 187 .

(Signed) *E. F.*,
Justice of the Peace (*or other title*).

(L.S.) EDWD. THORNTON.
(L.S.) HAMILTON FISH.

CONVENTION BETWEEN THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA RELATIVE TO THE DISPOSAL OF REAL AND PERSONAL PROPERTY.

Signed at Washington, March 2, 1899.

[*Ratifications exchanged at Washington, July 28, 1900.*]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, desiring to improve the condition of the subjects and citizens of each of the respective countries in relation to the tenure and disposition of real and personal property situated, or being within, the territories of the other, as well as to authorize the representation of deceased persons by the Consuls of their respective nations in the settlement of estates, have resolved to conclude a Convention for those purposes, and have named as their Plenipotentiaries:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Julian Pauncefote, Knight Grand Cross of the Orders of the Bath and of St. Michael and St. George, Ambassador Extraordinary and Plenipotentiary of Great Britain;

And the President of the United States of America, the Honourable John Hay, Secretary of State of the United States of America;

Who, having exchanged their said full powers, found in due and proper form, have agreed to and signed the following Articles:—

ARTICLE I.

Where, on the death of any person holding real property (or property not personal), within the territories of one of the Contracting Parties, such real property would, by the laws of the land, pass to a subject or citizen of the other, were he not disqualified by the laws of the country where such real property is situated, such subject or citizen shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and to withdraw the proceeds thereof without restraint or interference, and exempt from any succession, probate, or administrative duties or charges other than those which may be imposed in like cases upon the subjects or citizens of the country from which such proceeds may be drawn.

ARTICLE II.

The subjects or citizens of each of the Contracting Parties shall have full power to dispose of their personal property within the territories of the other by testament, donation, or otherwise; and their heirs, legatees, and donees, being subjects or citizens of the other Contracting Party, whether resident or non-resident, shall succeed to

their said personal property, and may take possession thereof either by themselves, or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the citizens or subjects of the country where the property lies shall be liable to pay in like cases.

ARTICLE III.

In case of the death of any subject of Her Britannic Majesty in the United States, or of any citizen of the United States of America in the United Kingdom of Great Britain and Ireland, without having, in the country of his decease, any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest Consular officer of the nation to which the deceased person belonged of the circumstance, in order that the necessary information may be immediately forwarded to persons interested.

The said Consular officer shall have the right to appear, personally or by delegate, in all proceedings on behalf of the absent heirs or creditors until they are otherwise represented.

ARTICLE IV.

The stipulations of the present Convention shall not be applicable to any of the Colonies or foreign possessions of Her Britannic Majesty unless notice to that effect shall have been given, on behalf of any such Colony or foreign possession, by Her Britannic Majesty's Representative at Washington to the United States Secretary of State within one year from the date of the exchange of the ratifications of the present Convention.

It is understood that, under the provisions of this Article, Her Majesty can in the same manner give notice of adhesion on behalf of any British Protectorate or sphere of influence, or on behalf of the Island of Cyprus, in virtue of the Convention of the 4th June, 1878, between Great Britain and Turkey.

The provisions of this Convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas only upon notice to that effect being given by the Representative of the United States at London, by direction of the Treaty-making power of the United States.

ARTICLE V.

In all that concerns the right of disposing of every kind of property, real or personal, subjects or citizens of each of the High Contracting Parties shall, in the dominions of the other, enjoy the rights which are or may be accorded to the subjects or citizens of the most favoured nation.

ARTICLE VI.

The present Convention shall come into effect ten days after the day upon which the ratifications are exchanged, and shall remain in force for ten years after such exchange. In case neither of the High

Contracting Parties shall have given notice to the other twelve months before the expiration of the said period of ten years of the intention to terminate the present Convention, it shall remain in force until the expiration of one year from the day on which either of the High Contracting Parties shall have given such notice.

Her Britannic Majesty or the United States shall also have the right separately to terminate the present Convention at any time, on giving twelve months' notice to that effect in regard to any British Colony, foreign possession, or dependency, as specified in Article IV., which may have acceded thereto.

Article VII.

The present Convention shall be duly ratified by Her Britannic Majesty and by the President of the United States, by and with the approval of the Senate thereof, and the ratifications shall be exchanged in London or in Washington.

In faith whereof we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate at Washington, the second day of March, one thousand eight hundred and ninety-nine.

(L.S.) JULIAN PAUNCEFOTE.
(L.S.) JOHN HAY.

ARTICLES OF THE FRENCH CIVIL CODE AS TO NATIONALITY.

7. L'exercice des droits civils est indépendant de la qualité de citoyen, laquelle ne s'acquiert et ne se conserve que conformément à la loi constitutionnelle.

8. Tout Français jouira des droits civils.

9. Tout individu né en France d'un étranger pourra, dans l'année qui suivra l'époque de sa majorité, réclamer la qualité de Français ; pourvu que, dans le cas où il résiderait en France, il déclare que son intention est d'y fixer son domicile, et que, dans le cas où il résiderait en pays étranger, il fasse sa soumission de fixer en France son domicile, et qu'il l'y établisse dans l'année, à compter de l'acte de soumission.

10. Tout enfant né d'un Français en pays étranger est Français.— Tout enfant, né en pays étranger d'un Français qui aurait perdu la qualité de Français, pourra toujours recouvrer cette qualité, en remplissant les formalités prescrites par l'art. 9.

11. L'étranger jouira en France des mêmes droits civils que ceux qui sont ou seront accordés aux Français par les traités de la nation à laquelle cet étranger appartiendra.

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12. L'étrangère qui aura épousé un Français, suivra la condition de son mari.

13. L'étranger qui aura été admis par l'autorisation du Roi à établir son domicile en France, y jouira de tous les droits civils, tant qu'il continuera d'y résider.

17. La qualité de Français se perdra, 1° par la naturalisation acquise en pays étranger ; 2° par l'acceptation non autorisée par le Roi, de fonctions publiques conférées par un gouvernement étranger ; 3° enfin par tout établissement fait en pays étranger, sans esprit de retour. Les établissemens de commerce ne pourront jamais être considérés comme ayant été faits sans esprit de retour.

18. Le Français qui aura perdu sa qualité de Français, pourra toujours la recouvrer en rentrant en France avec l'autorisation du Roi, et en déclarant qu'il veut s'y fixer, et qu'il renonce à toute distinction contraire à la loi française.

19. Une femme française qui épousera un étranger, suivra la condition de son mari. Si elle devient veuve, elle recouvrera la qualité de Française, pourvu qu'elle réside en France, ou qu'elle y rentre avec l'autorisation du Roi, et en déclarant qu'elle veut s'y fixer.

20. Les individus qui recouvreront la qualité de Français, dans les cas prévus par les articles 10, 18 et 19, ne pourront s'en prévaloir qu'après avoir rempli les conditions qui leur sont imposées par ces articles, et seulement pour l'exercice des droits ouverts à leur profit depuis cette époque.

21. Le Français qui, sans autorisation du Roi, prendrait du service militaire chez l'étranger, ou s'affilierait à une corporation militaire étrangère, perdra sa qualité de Français. Il ne pourra rentrer en France qu'avec la permission du Roi, et recouvrer la qualité de Français qu'en remplissant les conditions imposées à l'étranger pour devenir citoyen ; le tout sans préjudice des peines prononcées par la loi criminelle contre les Français qui ont porté ou porteront les armes contre leur patrie.

[*This Civil Code is in force in Mauritius; all these articles are, however, repealed in France by the following Law.*]

LAW OF FRANCE AS TO NATIONALITY AND NATURALIZATION.

Loi du 26 Juin 1889.

ARTICLE PREMIER.

Les Articles 7, 8, 9, 10, 12, 13, 17, 18, 19, 20 et 21 du Code civil sont modifiés ainsi qu'il suit :

"Art. 7. L'exercice des droits civils est indépendant de l'exercice

des droits politiques, lesquels s'acquièrent et se conservent conformément aux lois constitutionnelles électorales."

"Art. 8. Tout Français jouira des droits civils.

"Sont Français:

"1° Tout individu né d'un Français en France ou à l'étranger.

"L'enfant naturel dont la filiation est établie pendant la minorité, par reconnaissance ou par jugement, suit la nationalité de celui des parents à l'égard duquel la preuve a d'abord été fait. Si elle résulte pour le père ou la mère du même acte ou du même jugement, l'enfant suivra la nationalité du père.

"2° Tout individu né en France de parents inconnus ou dont la nationalité est inconnue.

"3° Tout individu né en France d'un étranger qui lui-même y est né.

"4° Tout individu né en France d'un étranger et qui, à l'époque de sa majorité, est domicilié en France, à moins que, dans l'année qui suit sa majorité, telle qu'elle est réglée par la loi française, il n'ait décliné la qualité de Français et prouvé qu'il a conservé la nationalité de ses parents par une attestation en due forme de son gouvernement, laquelle demeurera annexée à la déclaration, et qu'il n'ait en outre produit, s'il y a lieu, un certificat constatant qu'il a répondu à l'appel sous les drapeaux, conformément à la loi militaire de son pays, sauf les exceptions prévues aux traités.

"5° Les étrangers naturalisés.

"Peuvent être naturalisés:

"1° Les étrangers qui ont obtenu l'autorisation de fixer leur domicile en France, conformément à l'article 13 ci-dessous, après trois ans de domicile en France, à dater de l'enregistrement de leur demande au Ministère de la justice;

"2°. Les étrangers qui peuvent justifier d'une résidence non interrompue pendant dix années;

"Est assimilé à la résidence en France le séjour en pays étranger pour l'exercice d'une fonction conférée par le Gouvernement français.

"3°. Les étrangers admis à fixer leur domicile en France, après un an, s'ils ont rendu des services importants à la France, s'ils y ont apporté des talents distingués ou s'ils y ont introduit soit une industrie, soit des inventions utiles, ou s'ils ont créé soit des établissements industriels ou autres, soit des exploitations agricoles, ou s'ils ont été attachés, à un titre quelconque, au service militaire dans les colonies ou les protectorats français;

"4°. L'étranger qui a épousé une Française, aussi après une année de domicile autorisé.

"Il est statué par decret sur la demande de naturalisation, après une enquête sur la moralité de l'étranger."

"Art. 9. Tout individu né en France d'un étranger et qui n'y est pas domicilié a l'époque de sa majorité pourra, jusqu'à l'âge de vingt-deux ans accomplis, faire sa soumission de fixer en France son domicile et, s'il l'y établit dans l'année à compter de l'acte de soumission, réclamer la qualité de Français par une déclaration qui sera enregistrée au Ministère de la justice.

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"S'il est agé de moins de vingt et un ans accomplis, la déclaration sera fait en son nom par son père ; en cas de décès par sa mère ; en cas de décès du père et de la mère ou de leur exclusion de la tutelle, ou dans les cas prévus par les articles 141, 142, et 143 du Code civil, par le tuteur autorisé par délibération du conseil de famille.

"Il devient également Français si, ayant été porté sur le tableau de recensement, il prend part aux opérations de recrutement sans opposer son extranéité."

"Art. 10. Tout individu né en France ou à l'étranger de parents dont l'un a perdu la qualité de Français pourra réclamer cette qualité à tout âge, aux conditions fixées par l'article 9, à moins que, domicilié en France et appelé sous le drapeaux lors de sa majorité, il n'ait revendiqué la qualité d'étranger."

"Art. 12. L'étrangère qui aura épousé un Français suivra la condition de son mari.

"La femme mariée à un étranger qui se fait naturaliser Français et les enfants majeurs de l'étranger naturalisé pourront, s'ils le demandent, obtenir la qualité de Français, sans condition de stage, soit par le décret qui confère cette qualité au mari, ou au père, ou à la mère, soit comme conséquence de la déclaration qu'ils feront dans les termes et sous les conditions de l'article 9.

"Deviennent Français : les enfants mineurs d'un père ou d'une mère survivant qui se font naturaliser Français, à moins que, dans l'année qui suivra leur majorité, ils ne déclinent cette qualité en se conformant aux dispositions de l'article 8, § 4."

"Art. 13. L'étranger qui aura été autorisé par décret à fixer son domicile en France y jouira de tous les droits civils.

"L'effet de l'autorisation cessera à l'expiration de cinq années, si l'étranger ne demande pas la naturalisation, ou si la demande est rejetée.

"En cas de décès avant la naturalisation, l'autorisation et le temps de stage qui a suivi profiteront à la femme et aux enfants qui étaient mineurs au moment du décret d'autorisation."

"Art. 17. Perdent la qualité de Français :

"1°. Le Français naturalisé à l'étranger ou celui qui acquiert sur sa demande la nationalité étrangère par l'effet de la loi ;

"S'il est encore soumis aux obligations du service militaire pour l'armée active, la naturalisation à l'étranger ne fera perdre la qualité de Français que si elle a été autorisée par le Gouvernement français ;

"2°. Le Français qui a décliné la nationalité française dans les cas prévus au paragraphe 4 de l'article 8 et aux articles 12 et 18 ;

"3°. Le Français qui, ayant accepté des fonctions publiques conférées par un gouvernement étranger, les conserve nonobstant l'injonction du Gouvernement français de les résigner dans un délai déterminé ;

"4 Le Français qui, sans autorisation du Gouvernement, prend du service militaire à l'étranger, sans préjudice des lois pénales contre le Français qui se soustrait aux obligations de la loi militaire."

Law of France

"Art. 18. Le Français qui a perdu sa qualité de Français peut la recouvrer pourvu qu'il réside en France, en obtenant sa réintégration par décret. La qualité de Français pourra être accordée par le même décret à la femme et aux enfants majeurs s'ils en font la demande. Les enfants mineurs du père ou de la mère réintégrés deviennent Français, à moins que, dans l'année qui suivra leur majorité, ils ne déclinent cette qualité en se conformant aux dispositions de l'article 8, § 4."

"Art 19. La femme française qui épouse un étranger suit la condition de son mari, à moins que son mariage ne lui confère pas la nationalité de son mari, auquel cas elle reste Française. Si son mariage est dissous par la mort du mari ou par le divorce, elle recouvre la qualité de Française, avec l'autorisation du Gouvernement, pourvu qu'elle réside en France ou qu'elle y rentre, en déclarant qu'elle veut s'y fixer.

"Dans le cas ou le mariage est dissous par la mort du mari, la qualité de Français peut être accordée par le même décret de réintegration aux enfants mineurs, sur la demande de la mère ou par un décret ultérieur, si la demande en est fait par le tuteur avec l'approbation du conseil de famille."

"Art. 20. Les individus qui acquerront la qualité de Français dans les cas prévus par les articles 9, 10, 18 et 19 ne pourront s'en prévaloir que pour les droits ouverts à leur profit depuis cette époque."

"Art. 21. Le Français qui, sans autorisation du Gouvernement, prendrait du service militaire à l'étranger, ne pourra rentrer en France qu'en vertu d'une permission accordée par décret, et recouvrer la qualité de Français qu'en remplissant les conditions imposées en France à l'étranger pour obtenir la naturalisation ordinaire."

ART. 2.

La présente loi est applicable à l'Algérie et aux colonies de la Guadeloupe, de la Martinique et de la Reunion.

Continueront toutefois de recevoir leur application le sénatus-consulte du 14 juillet 1865 et les autres dispositions spéciales à la naturalisation en Algérie.

ART. 3.

L'étranger naturalisé jouit de tous les droits civils et politique attachés à la qualité de citoyen français. Néanmoins il n'est éligible aux assemblées législatives que dix ans après le décret de naturalisation, à moins qu'une loi spéciale n'abrège ce délai. Le délai pourra être réduit à une année.

Les Français qui recouvrent cette qualité, après l'avoir perdue, acquièrent immédiatement tous les droits civils et politiques, même l'éligibilité aux assemblées législatives.

ART. 4.

Les descendants des familles proscrites lors de la révocation de l'édit de Nantes continueront à bénéficier des dispositions de la loi du

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15 décembre 1790, mais à la condition d'un décret spécial pour chaque demandeur. Ce décret ne produira d'effet que pour l'avenir.

ART. 5.

Pour l'exécution de la présente loi, un réglement d'administration publique déterminera: 1° les conditions auxquelles ses dispositions sont applicables aux colonies autres que celles dont il est parlé à l'article 2 ci-dessus, ainsi que les formes à suivre pour la naturalisation dans les colonies; 2° les formalités à remplir et les justifications à faire relativement à la naturalisation ordinaire et à la naturalisation de faveur, dans les cas prévus par les articles 9 et 10 du Code civil, ainsi qu'à la renonciation à la qualité de Français, dans les cas prévus par les articles 8 § 4, 12 et 18.

ART. 6.

Sont abrogés les decrets des 6 avril 1809 et 25 août 1811, les lois des 22 mars 1849, 7 février 1851, 29 juin 1862, 16 décembre 1874, 14 février 1882, 22 juin 1883, et toutes les dispositions contraires à la présente loi.

DISPOSITIONS TRANSITOIRES.

Toute admission à domicile obtenue antérieurement à la présente loi sera périmée si, dans un délai de cinq années à compter de la promulgation, elle n'a pas été suivie d'une demande en naturalisation, ou si la demande en naturalisation a été rejetée.

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